3–28–00 Tuesday
Vol. 65 No. 60 Mar. 28, 2000
Pages 16297–16508

Federal Register

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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 18, 2000

WHERE: Conference Room, Suite 700
Office of the Federal Register
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 65, No. 60

Tuesday, March 28, 2000

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–18 of March 16, 2000

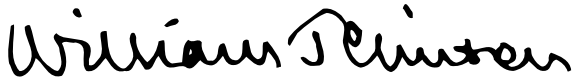
Sanctions on India

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President of the United States, including under title IX of the Department of Defense Appropriations Act, 2000 (Public Law 106–79), I hereby waive the sanctions contained in sections 101 and 102 of the Arms Export Control Act, section 620E(e) of the Foreign Assistance Act of 1961, and section 2(b)(4) of the Export-Import Bank Act of 1945:

> With respect to India, insofar as such sanctions would otherwise apply to assistance to the South Asia Regional Initiative/Energy; the Presidential Initiative on Internet for Economic Development; the Financial Institution Reform and Expansion program; and the United States Educational Foundation in India Environmental Exchange.

You are hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 16, 2000.

[FR Doc. 00–7748
Filed 03–27–00; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG19

List of Approved Spent Fuel Storage Casks; Revision, NUHOMS 24–P and NUHOMS 52–B

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations containing the list of approved spent fuel storage cask designs by adding an amended version of Certificate of Compliance Number (CoC No.) 1004 to this list. The amended version reflects a change of ownership of this certificate from VECTRA Technologies, Inc. to Transnuclear West, Inc., (TN West) as well as an amendment to the certificate.

EFFECTIVE DATE: This final rule is effective on April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary (of Energy) shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

The NRC is revising information contained in § 72.214 under CoC No. 1004 to reflect Amendment No. 1 to CoC No. 1004 and to address four administrative issues in the current language in § 72.214. These four administrative issues include (1) correcting the expiration date of CoC No. 1004 from the present ''(20 years after the final rule effective date)'' to ''January 23, 2015;'' (2) correcting the title and revision number of the standardized NUHOMS SAR to be consistent with the approach the NRC adopted for CoC SARs in a new § 72.248 (see final rule in 64 FR 53582; October 4, 1999); (3) revising the CoC to reflect the transfer of the CoC from VECTRA Technologies, Inc. to Transnuclear West, Inc., (TN West); and (4) specifying the applicability of Amendment No. 0 and Amendment No. 1 to this CoC.

Change 1 keeps the certificate expiration date consistent with the NRC's policy for part 72 CoCs, which is to use 20 years from the date the final rule is effective. The final rule adding CoC No. 1004 to § 72.214 was effective on January 23, 1995; consequently, the expiration date for this CoC is January 23, 2015.

Change 2 keeps CoC No. 1004 consistent with other recent changes to 10 CFR 72.248. The SAR title will be changed from ''Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel, Revision 2'' to ''Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel.'' In the new § 72.248, a final SAR is to be submitted to the Commission within 90 days after approval of the cask design and then will be updated periodically. Replacement pages will be provided to the Commission in accordance with § 72.248.

Change 3 recognizes the transfer of the CoC from VECTRA to TN West. NRC received letters dated December 18, 1997, from both VECTRA and TN West describing the purchase of VECTRA's intellectual properties and assets associated with NUHOMS technology by TN West. In its December 18, 1997, letter, TN West described that it planned to conduct fabrication activities in accordance with the quality assurance program described in Section 11 of the NUHOMS SAR. TN West further described that it had acquired the composite records of casks manufactured under CoC No. 1004 and that it had records associated with changes to the NUHOMS design implemented after issuance of the CoC.

Change 4 describes how general licensees would continue to use spent fuel storage casks manufactured under the original CoC No. 1004, if the cask being used was fabricated before April 27, 2000. After April 27, 2000, casks must be manufactured in accordance with CoC No. 1004, Amendment No. 1. This final rule issues Amendment No. 1 to CoC No. 1004. Amendment No. 1 revises and reformats the CoC to be consistent with the NRC's current format and layout for part 72 certificates. Proposed condition No. 4 in CoC No. 1004 is removed in response to comments as discussed below. Conditions No. 1 through 8 are renumbered.

Based on the October 1995 and January 1999 safety evaluations, the newly established fabrication inspection procedures, and the Amendment No. 1 to CoC No. 1004, the NRC staff has concluded that the NUHOMS–24P and –52B cask design, when used in accordance with the conditions specified in the CoC as amended, and NRC regulations, will meet the part 72 requirements and thus ensure adequate protection of the public health and safety.

The Amendment No. 1 to CoC No. 1004, the VECTRA safety analyses, and the NRC staff safety evaluations are available for inspection at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003–1527. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov.* Single copies of the Amendment No. 1 to CoC No. 1004 may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6234, email spt@nrc.gov.

Public Comments on the Proposed Rule

Summary of Public Comments on Proposed Rule

The NRC received two comment letters on the proposed rule. One comment was from a user of the NUHOMS spent fuel storage system and the other was from the vendor of the NUHOMS spent fuel storage system. Both commenters supported the overall approach taken in the proposed amendment. However, both commenters also disagreed with the proposed change to Condition No. 4 in the CoC and proposed alternate wording. Condition No. 4 was added, in part, in response to a February 5, 1997, NMSS Director's Decision, to ensure future compliance with § 72.150, with respect to dry shielded canister (DSC) shell-weld thickness, by requiring inspection of DSC shell welds. Both commenters believe that the concerns identified in the Director's Decision have been overtaken by other events, specifically the numerous corrective actions taken by Vectra and later by TN West—Vectra was subsequently acquired by TN West. These actions corrected the petitioner's and NRC's concerns regarding this issue.

At the time of the Director's Decision, Vectra had already begun an exhaustive review of its design, licensing, fabrication, and quality assurance program and implemented numerous improvements to its fabrication specifications, drawings, and procedures. The remaining concerns were addressed by TN West and resulted in NRC authorizing resumption of fabrication of NUHOMS components in 1998. Both commenters indicated that TN West has translated and implemented the proposed Condition No. 4 into the fabrication drawings and specifications. Furthermore, these corrective actions provide adequate assurance that the NUHOMS storage system will perform its intended safety function. Therefore, including such detailed fabrication and inspection requirements in the CoC is redundant, inconsistent with the NRC's initiative in this rule to be uniform in the format and layout for part 72 CoCs, and is unnecessary.

Response: The NRC agrees with the comments, in part. The 1997 Director's Decision established a process to provide other interested members of the public an opportunity to comment on any aspect of the NRC safety evaluation associated with this issue. One purpose of the rulemaking was to consider whether the wall thinning issue justified a unique fabrication inspection requirement in the CoC No. 1004. The Director's Decision was based, in part, on Vectra's performance history with this issue and concluded that changes to the CoC merited consideration. After the 1997 Director's Decision, requirements for wall thickness have been included and implemented in the NUHOMS storage system fabrication specifications, procedures, and inspection requirements. In the revised CoC, Condition No. 3 specifies that the system drawings for the NUHOMS are contained in Appendix E of the Safety Analysis Report. The NRC also notes that Vectra's performance history with this issue is no longer a relevant factor in establishing the CoC conditions, because VECTRA is no longer involved in the fabrication of the NUHOMS storage system.

Additionally, the NRC has recently published a separate final rule to expand the applicability of the quality assurance provisions of part 72, subpart G, to certificate holders and applicants for a CoC (64 FR 56114; October 15, 1999). Three of the sections in the revised subpart G are relevant to this response (see §§ 72.146, ''Design Control''; 72.150, ''Instructions, Procedures, and Drawings''; and 72.160, ''Licensee and Certificate Holder Inspection''). The revised § 72.146(a) states, in part:

> The * * * certificate holder * * * shall establish measures to ensure that applicable regulatory requirements and the design basis, as specified in the * * * CoC application for those structures, systems, and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to ensure that appropriate quality standards are included in design documents * * *

The revised § 72.150 states, in part:

> The * * * certificate holder * * * shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed.

The revised § 72.160 states, in part:

> The * * * certificate holder * * * shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity to verify conformance with documented instructions, procedures, and drawings for the accomplishment of the activity.

TN West's [VECTRA's] revision of the design drawings, instructions, and procedures to specify a weld thickness of greater than 0.500 inch and a weld inspection requirement and its responsibility as the certificate holder to comply with the new quality assurance requirements contained in §§ 72.146, 72.150, and 72.164, taken together, provide reasonable assurance that public health and safety will not be adversely affected by the continued manufacture and use of the NUHOMS storage system. Consequently, the NRC agrees with the commenters that the proposed Condition No. 4 is unnecessary and would be inconsistent with a purpose of the proposed rule related to the NRC's initiative to establish a standard format and content for all Part 72 CoCs. However, the NRC disagrees with the alternative solution proposed by the commenters to retain a modified version of Condition No. 4, because this action would not be fully consistent with the intent of the commenter's standardization issue; nor would it be fully consistent with the NRC's initiative in the proposed rule to establish a standard format and content for Part 72 CoCs.

Therefore, inclusion of the proposed detailed fabrication requirements (i.e., proposed Condition No. 4) in CoC No. 1004 is unnecessary and is removed in this final rule. All other changes to the CoC stand as proposed. The NRC considers that this action is consistent with the actions delineated in the February 5, 1997, Director's Decision and the subsequent rulemaking to expand the applicability of the Part 72 quality assurance regulations in Subpart G to certificate holders.

Summary of Final Revisions

The NRC staff modified the listing for the Transnuclear West, Inc. NUHOMS

24–P and NUHOMS 52–B cask system within 10 CFR 72.214, ''List of approved spent fuel storage casks,'' with respect to the expiration date of CoC, the title and revision number of the standardized NUHOMS SAR, and the applicability of Amendment No. 0 and Amendment No. 1 to the CoC. The NRC staff also revised the CoC.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. This final rule adds an amended version of Certificate of Compliance Number (CoC No.) 1004 to the list of approved spent fuel storage casks that power-reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, e-mail spt@nrc.gov.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is adding an amended version of CoC No. 1004 to the list of approved spent fuel storage casks that power-reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this

determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear West, Inc. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In Section 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004
Amendment Number: 0 and 1
Amendment Applicability:
Amendment No. 0 is applicable for casks manufactured before [insert effective date of final rule].
Amendment No. 1 is applicable for casks manufactured after [insert effective date of final rule].
SAR Submitted by: Transnuclear West, Inc.
SAR Title: Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel
Docket Number: 72–1004
Certificate Expiration Date: January 23, 2015
Model Numbers: Standardized NUHOMS–24P and NUHOMS–52B

* * * * *

Dated at Rockville, Maryland, this 13th day of March, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–7431 Filed 3–27–00; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1057]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; correction.

SUMMARY: This document corrects the preamble to an interim rule published in the **Federal Register** of March 21, 2000, regarding procedures for bank holding companies and foreign banks to elect to be treated as financial holding companies. This correction clarifies that depository institution subsidiaries of foreign banks electing financial holding company status must meet the same requirements as depository institution subsidiaries of bank holding companies electing financial holding company status.

DATES: This correction is effective March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Ann Misback, 202–452–3788.

Correction

In interim rule FR Doc. No. 00–6049, beginning on 65 FR 15053 in the issue of March 21, 2000, make the following correction in the Summary section. On page 15053 in the second column beginning on the first line, remove the first sentence in its entirety and replace it with the following sentence:

''Second, in order to make the requirements for foreign banks consistent with the requirements imposed on bank holding companies, the Board is amending the interim rule to require that all U.S. depository institution subsidiaries (such as thrifts and nonbank trust companies) of electing foreign banks meet the same requirements as depository institution subsidiaries of bank holding companies.''

Dated: March 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7432 Filed 3–27–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 563c, 563g

[No. 2000–30]

RIN 1550–AB38

Transfer and Repurchase of Government Securities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Direct final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is removing its regulation on the transfer and repurchase of government securities. This regulation is unnecessary and is

overly burdensome to savings associations.

DATES: The direct final rule is effective May 30, 2000 without further notice, unless OTS receives significant adverse comments by April 27, 2000. If OTS receives such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Attention Docket No. 2000–30. Hand deliver comments to Public Reference Room, 1700 G Street, NW., lower level, from 9 a.m. to 5 p.m. on business days. Send facsimile transmissions to FAX (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Ed O'Connell, (202) 906–5694, Manager, Supervision Policy: or Teresa Scott (202) 906–6478, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

OTS regulations at 12 CFR 563.84 govern the transfer and repurchase of government securities under certain circumstances where the savings association is obligated to repurchase.[1] This rule applies to repurchase obligations evidencing an indebtedness arising from a transfer of direct obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or any agency of the United States.

The rule prohibits savings associations from issuing repurchase agreement obligations in denominations under $100,000 and a maturity of 90 days or more, unless the savings association issues the obligation to an institution whose accounts or deposits are insured by the Federal Deposit Insurance Corporation (''FDIC'') or to a broker or dealer registered with the Securities and Exchange Commission. Repurchase agreement obligations under $100,000 with a maturity of less than 90 days are subject to various consumer protection and other requirements. Specifically, the rule: (1) Mandates that all such agreements, related advertisements and offering statements must include a legend indicating that the obligation is not a savings account or deposit and is not insured by the FDIC; (2) prohibits savings associations from making specified representations regarding deposit insurance, guarantees, etc.; (3) requires the purchaser under the repurchase agreement to obtain a perfected security interest in the securities under applicable state law; (4) requires that the value of the security underlying the repurchase agreement be maintained at a level at least equal to the principal amount of the repayment obligation; (5) requires that savings associations issuing repurchase agreements to the public make full and accurate disclosures of all material information regarding the repurchase agreement; (6) imposes additional requirements on certain renewals beyond 89 days; and (7) requires a savings association to provide additional safeguards and financial disclosures if it does not meet specified requirements regarding total capital.[2]

OTS is removing § 563.84 because it is unnecessary and imposes overly burdensome requirements on savings associations. One of the original purposes of the predecessor of § 563.84 was to ensure that savings associations would not use repurchase agreements as a method of offering small denomination accounts to avoid existing interest rate ceiling restrictions on deposit accounts.[3] In 1979, the Federal Home Loan Bank Board (FHLBB) issued a policy statement prohibiting savings associations from entering into any government securities repurchase agreements in amounts under $100,000, except with federally insured depository institutions or with broker dealers. Because the potential for circumvention of the maximum interest rate ceiling was reduced if the maturity of the agreement was less than 90 days, the FHLBB revised the policy statement to permit short term agreements in amounts under $100,000, subject to certain consumer protections.[4] The FHLBB codified the policy statement in its regulations in 1982 and expanded consumer protection requirements.[5]

It is no longer necessary to retain § 563.84 to prevent evasions of maximum interest rate ceilings on deposit accounts. Interest rate ceilings have not been in effect since March of 1986 when the FHLBB's authority to set these ceilings expired.[6] Savings associations, of course, still may not pay interest on commercial checking accounts.[7] However, OTS has concluded that federal savings associations may offer various sweep accounts to transfer idle, non-interest bearing demand deposit account (DDA) checking funds to investment vehicles to generate earnings.[8] OTS has specifically stated that these sweep accounts, including sweep arrangements that use government security repurchase agreements, are permissible notwithstanding the prohibition on the payment of interest on DDAs.

To the extent that § 563.84 was designed to protect consumers who buy United States government securities under repurchase agreements, OTS believes that existing statutes, regulations and guidance already adequately serve this function. The commercial repurchase market is much more developed than when the regulation was adopted and is regulated now in other ways. The Government Securities Act of 1986 (the GSA),[9] for example, protects investors in government securities by establishing appropriate financial responsibility and custodial standards. Under the Department of Treasury's implementing regulations,[10] a thrift that holds government securities for another party to a hold-in-custody repurchase agreement must comply with requirements for safeguarding and custody of the securities. The savings association is also subject to other provisions requiring written agreements, confirmations and disclosures, including disclosures that the obligation is not a deposit and is not insured by the FDIC.[11] Moreover, Thrift Bulletin 23–2, Interagency Statement on Retail Sales of Non-deposit Investment

[1] Under these repurchase obligations, a savings association obtains funds by selling government securities, and simultaneously agrees to buy back the securities at a specified price and date.

[2] Under this requirement, a savings association's total capital must equal one percent of its liabilities plus 20 percent of its classified assets.

[3] *See* 12 CFR 531.12, published 44 FR 33669 (June 12, 1979).

[4] 44 FR 46445 (August 6, 1979).

[5] 47 FR 23140 (May 27, 1982).

[6] As of March 31, 1986, the FHLBB's authority to regulate payment of interest under section 5B of the Federal Home Loan Bank Act expired. 12 U.S.C. 1425b (1980). The FHLBB amended its regulations to reflect these changes on March 31, 1986. *See* 51 FR 10810 (March 31, 1986).

[7] 12 U.S.C. 1464(b)(1)(B)(i).

[8] Op. Chief Counsel (March 2, 1998). Typically, under these transactions, funds are swept out of a DDA at the end of a business day and into an investment vehicle, and swept back to the DDA the next morning to pay checks as needed. This process is repeated each business day.

[9] The Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat 3208), as amended by, Pub. L. 103–202, 107 Stat 2344.

[10] 17 CFR parts 400 through 450.

[11] Savings associations that enter into repurchase agreements should pay particular attention to the requirements and required disclosures at 17 CFR 403.5.

Products (February 22, 1994) provides for certain customer protections, including disclosures, for retail sales of non-deposit investment products, including government securities repurchase agreements. In addition, OTS notes that state and federal anti-fraud provisions, which generally require the disclosure of facts that would be material to a decision to invest in a security, also apply to repurchase transactions.[12]

OTS also believes that § 563.84 may unduly restrict savings associations' ability to engage in certain types of transactions. Since none of the other federal banking agencies currently have similar provisions, OTS believes that the retention of this rule may have a negative impact on the ability of OTS-regulated institutions to compete on an equal footing.

For example, in a recent opinion letter, OTS clarified the authority of savings associations to offer various types of sweep accounts, including the use of repurchase agreements in sweep accounts.[13] Section 563.84, however, requires that the interest of a repurchase agreement purchaser in the security or securities underlying the repurchase agreement constitute a perfected security interest under applicable state law. Various state laws[14] no longer allow for the perfection of a security interest in a security through placement with a trustee, such as a Federal Home Loan Bank. Other perfection methods may be operationally impractical in the context of repurchase agreement sweep accounts that typically involve repeated collateralizations of varying dollar amounts.[15] As a result, this regulation may effectively bar savings associations' use of repurchase agreement sweep accounts to accommodate the cash management needs of their commercial customers. As noted above, other financial institutions are not subject to similar restrictions.

For these reasons, OTS is deleting § 563.84. In the absence of this provision, federal savings associations would continue to be authorized to engage in repurchase agreements. This authority would be subject to applicable statutes and regulations, including the GSA, Treasury's implementing regulations, Thrift Bulletin 23–2, and state and federal securities laws. In addition, the Federal Financial Institutions Examination Council's Policy Statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others[16] provides safety and soundness guidance to depository institutions entering into repurchase agreements. The FFIEC Policy Statement cautions that institutions should have adequate policies and controls for their particular circumstances, provides explicit guidance for controlling collateral for securities sold under an agreement to repurchase, and contains other pertinent guidance.

Rulemaking Procedures

Direct final rulemaking is a technique for expediting the issuance of non-controversial rules. Under this procedure, an agency may publish a rule in the **Federal Register** with a statement that, unless a significant adverse comment is received within a specified time period, the rule will become effective as a final rule on a particular date. If a significant adverse comment is filed, however, the agency must withdraw the direct final rule and complete standard notice and comment procedures. This procedure permits an agency to issue final rules expeditiously, while at the same time offering the public the opportunity to challenge the agency's view that the rule is non-controversial.[17]

Several other federal agencies, including the Environmental Protection Agency, the Department of Agriculture, and the Department of Transportation, have used this procedure to expedite non-controversial rules. The primary advantage of the procedure is that it permits an agency to issue rules without having to go through internal and external review processes twice (*i.e.,* at the proposed and final rule stage).

The Administrative Conference of the United States adopted Recommendation 95–4 encouraging the use of direct final rulemaking,[18] and recommending that agencies develop a direct final rulemaking process for issuing rules that are unlikely to result in significant adverse comments.

OTS has concluded that this rule is non-controversial and should elicit no significant adverse comment.[19] Accordingly, the agency has determined that it is appropriate to apply direct final rulemaking procedures. This preamble explains the procedures OTS intends to use for direct final rules. The agency welcomes any comments on how to make this process more useful.

Consistent with the Administrative Conference's recommendations, OTS is applying the following procedures in this rulemaking:

OTS is publishing this notice of direct final rule in the final rule section of the **Federal Register** and is including an opportunity for public comment on the substance of the change (*i.e.,* a 30-day public comment period). Consistent with the Administrative Conference recommendation, OTS has included a statement of basis and purpose for the rule and has discussed relevant substantive issues in the discussion above.

The direct final rule will automatically become effective in 60 days, unless OTS receives a significant adverse comment within the 30-day comment period. If a timely, significant adverse comment is received, OTS will withdraw the direct final rule before the stated effective date. To be a significant adverse comment, the comment must explain why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why the rule would be ineffective or unacceptable without a change.

To ensure that the promulgation of a final rule will not be delayed if significant adverse comments are submitted, OTS has published a related notice of proposed rulemaking (NPRM) elsewhere in today's **Federal Register**. This related notice cross-references the direct final rule. The related notice indicates that if a timely, significant adverse comment on the matter is received, OTS will address all public

[12] *See* The Federal Financial Institutions Examination Council's Policy Statement on Repurchase Agreements of Depository Institutions with Security Dealers and Others, 63 FR 6935 (February 11, 1998) and Thrift Bulletin 23–2.

[13] Op. Chief Counsel (March 2, 1998).

[14] *See* Uniform Commercial Code, Article 8, as amended by the various states.

[15] Although this rule eliminates the requirement that the purchaser under the repurchase agreement obtain a perfected security interest in the securities under state law, 17 CFR 450.4 of the Treasury GSA regulations provides specific protections for safeguarding and custody of the securities.

[16] 63 FR 6935 (February 11, 1998).

[17] Under current law, direct final rulemaking is supported by two rationales. First, it is justified by the Administrative Procedure Act's ''good cause'' exemption from notice-and-comment procedures where such procedures are ''unnecessary.'' The agency's solicitation of public comment does not undercut this argument, but rather is used to validate the agency's initial determination.

Alternatively, direct final rulemaking also complies with the basic notice-and-comment requirements in section 553 of the APA. The agency provides notice and opportunity to comment on the rule through its **Federal Register** notice; the publication requirements are met, although the information has been published earlier in the process than normal; and the requisite advance notice of the effective date required by the APA is provided.

[18] 60 FR 43108 (Aug. 18, 1995). The National Performance Review has also endorsed the use of this process. *See* Office of the Vice President, Creating a Government that Works Better and Costs Less, Improving Regulatory Systems, National Performance Review, 42–44 (1993).

[19] The rulemaking record includes a copy of a petition for rulemaking requesting OTS to initiate this proceeding.

comments in subsequent final rule based on the NPRM. If no significant adverse comments are timely received, OTS will take no further action on the NPRM.

Effective Date

This direct final rule imposes no additional requirements on insured depository institutions. This rule is therefore exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 [20] that regulations must not take effect before the first day of the quarter following publication.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[21] the Director certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. The rule merely removes an unnecessary regulation that imposes overly burdensome requirements on all savings associations, including small savings associations.

Executive Order 12866

OTS has determined that this direct final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this direct final rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that have federalism implications or taking actions that preempt state law. OTS has determined that this direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and will not preempt State law.

[20] Pub. L. No. 103–325, 12 U.S.C. 4802.

[21] Pub. L. No. 96–354, 5 U.S.C. 601.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563c

Accounting, Savings associations, Securities.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831i, 3806; 42 U.S.C. 4106.

§ 563.84 [Removed]

2. Section 563.84 is removed.

PART 563c—ACCOUNTING REQUIREMENTS

3. The authority citation for part 563c continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78m, 78n, 78w.

4. Section 563c.101 is amended by revising paragraph (c) to read as follows:

§ 563c.101 Application of this subpart.

* * * * *

(c) Any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.74 and debt securities under § 563.80 and § 563.81 of this chapter.

PART 563g—SECURITIES OFFERINGS

5. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

§ 563g.3 [Amended]

6. Section 563g.3 is amended by removing and reserving paragraph (a).

Dated: March 21, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–7419 Filed 3–27–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM167; Special Conditions No. 25–159–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 777 series airplanes. These airplanes as modified by BF Goodrich Aerospace will have novel and unusual design features associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1999, BF Goodrich Aerospace, 3420 South 7th Street, Suite 1, Phoenix, Arizona 85040, applied for a supplemental type certificate to install inflatable lapbelts for head injury protection on certain seats in Boeing Model 777 series airplanes. The Model 777 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) § 25.785 requires that

occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35 inches from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to 14 CFR part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Title 14 CFR 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified.

Amendment 25–64 is part of the Model 777 certification basis. Therefore, the seat installation with inflatable lapbelts must meet the requirement that a HIC of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, for example, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the Federal Aviation Regulations (FAR). Conversely, airbags in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive, and always available. These potential advantages must be balanced against the potential disadvantages in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. BF Goodrich Aerospace must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the airbag should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–78 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the airbag is considered a critical system; if inadvertent deployment could cause injuries to persons, the airbag should be considered an essential system. Finally, the airbag installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the airbag must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the airbag differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the airbag is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the airbag useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the airbag installation should be such that the airbag will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the airbag to provide protection for multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped by children whether lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate much quicker than ten seconds.

Finally, it should be noted that the special conditions are certification applied to the inflatable lapbelt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding, and must consider the combined effects of all such systems installed.

Type Certification Basis

Under the provisions of 14 CFR 21.101, BF Goodrich Aerospace must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: Amendments 25–1 through 25–82 for the Model 777–200 and Amendments 25–1 through 25–86 with exceptions for the Model 777–300. The U.S. type certification basis for the Model 777 is established in accordance with 14 CFR 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 777 series airplanes will incorporate the following novel or unusual design features: BF Goodrich is proposing to install an inflatable lapbelt on certain seats of Boeing Model 777 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similar to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system.

The CFR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of 14 CFR part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the Boeing Model 777 series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the airbag is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the airbag as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the airbags is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Discussion of Comments

Notice of proposed special conditions No. 25–99–10–SC for the Boeing Model 777 series airplanes was published in the **Federal Register** on December 13, 1999 (64 FR 69425). Three comments were received. One commenter concurred with the special conditions as proposed.

One commenter states that the requirement of condition #4 was vague, and that ''wear and tear'' needed further definition. The commenter suggests that the special condition be specific as to the level of wear and tear that must be addressed. The commenter indicates that operational inspections would be difficult and require changes to manufacturers' manuals. The commenter notes that the special condition seems to be focused on

pyrotechnically operated designs, and that this might not always be the case.

The FAA agrees that the term ''wear and tear'' is not particularly specific, and this was intentional. Depending on where certain components of the system are installed, their susceptibility to in-service wear and tear will vary. It is the intent of this requirement that the inflatable lapbelt will not deploy as a result of foreseeable in-service conditions, including interaction with passengers, if applicable, use of service carts, if applicable, and so on. There are regulatory requirements for instructions for continued airworthiness that continue to apply and are not a substitute for these special conditions. The device in question is pyrotechnically activated and, therefore, this condition was written with that in mind. Other designs that might require a different condition, or might not require a similar consideration, are not the subject of this special condition. No change is made to the special condition.

One commenter felt that special conditions #4 and #7 should also address the storage and transportation of the unit or its components, relative to inadvertent deployment. While this is a legitimate concern, it is not relevant to these special conditions, since it is not an issue for approval of the inflatable lapbelt on an airplane. Existing regulations in Title 49 of CFR address storage and transportation of hazardous materials.

One commenter states that the requirement of condition #5 was impractical as stated, since no injury severity level was specified. One commenter points out that a bruise or rash could be considered an injury under the current wording, and would therefore make the inflatable lapbelt unacceptable. The commenter suggests that the requirement should be stated as a performance criterion. For example, a requirement that deployment of the inflatable lapbelt should not cause an injury that would adversely affect the ability to egress the airplane.

Another commenter notes that in promotional literature the inflatable lapbelt appears to deploy from between the occupant and the seatbelt, and is characterized as a pre-tensioning device. The commenter considers that this could introduce new injury mechanisms that should be considered. In addition, the commenter questions whether this type of deployment could alter the position of the seatbelt itself, so that it bears on soft tissue, rather than the hips.

The intent of the requirement is to prevent the introduction of injury mechanisms that did not exist previously, or would not be present on a seat that complied with the regulations directly. In this regard, injuries that would affect rapid egress are certainly of concern. Bruises or friction injuries would not be considered new injury mechanisms. However, there could be other injury mechanisms that might not have a direct impact on rapid egress, but could still be debilitating. The special condition requires that the inflatable lapbelt not introduce injury mechanisms and that rapid egress not be affected. With regard to the manner in which the airbag deploys, the FAA agrees that this should be considered as part of the special conditions. In fact, the concern expressed by the commenter is precisely the sort of thing the special conditions are intended to address, *i.e.*, the introduction of injury mechanisms.

One commenter states that consideration should be given to potential injury resulting from an airbag that appears not to provide full coverage to the head. It is not clear what change to the special conditions the commenter intended as a result of this suggestion. The performance of the inflatable lapbelt must be assessed by actual test. Therefore, whether or not the airbag provides full coverage to the head will be evident from tests and, of course, the acceptability of this must be assessed. No change is made to the special conditions.

One commenter questioned the origin of the 10-second standard proposed in condition #8, and whether that standard applied equally to accidents that consisted of single and multiple impacts. The commenter also states that this requirement must be related to other time critical requirements in the regulations, such as those for exit opening, escape slide deployment and overall airplane evacuation time.

The requirement as written was intended to address a representative accident scenario, from initial impact until the airplane comes to rest. The reason that a specific time interval was chosen was in consideration of the fact that an evacuation cannot take place simultaneously with the accident. The 10-second interval was established based on FAA review of both test and accident data considering the time from impact until an airplane comes to rest, coupled with the time needed to prepare exits and escape slides for evacuation. Therefore, whether an accident consists of a single impact or several, 10 seconds after the device deploys, it should not impede rapid egress of occupants. This includes occupants of seats adjacent to deployed devices, as well as occupants of the seat in which the device deploys. No change is made to this provision. There is no need to further correlate this requirement to other evacuation time-related requirements, since there is no conflict or incompatibility.

One commenter notes that promotional literature implies that the inflatable lapbelt will have an end release buckle. The commenter questions whether this is appropriate in an aviation application and whether an injured person would be able to release such a buckle.

The FAA considers the utility and functionality of the buckle itself as not requiring special conditions. Any restraint system buckle must be demonstrated to be in compliance with the applicable requirements, whether it releases from the center or the end. Therefore, the fact that this restraint system is also equipped with an airbag device has no bearing on the buckle position assessment, other than as it relates to egress. Egress issues are already covered in condition #8.

Applicability

As discussed above, these special conditions are applicable to the Model 777 series airplanes. Should BF Goodrich apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 777 series airplanes modified by BF Goodrich Aerospace by installing inflatable lapbelts.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment, that could cause injury to a standing or sitting person, is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt, during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–78 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on March 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–7633 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–57–AD; Amendment 39–11632; AD 2000–05–22]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines. This amendment requires a one-time eddy current inspection (ECI) for cracks in the bolt holes of high pressure turbine (HPT) front rotating air seals. This amendment is prompted by reports of machining anomalies in a bolt hole that led to an HPT front rotating air seal failure. The actions specified by this AD are intended to detect cracks in the bolt holes of HPT front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft.

DATES: Effective May 2, 2000.

The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of May 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C Series Turbofan Engines was published in the **Federal Register** on December 13, 1999 (64 FR 69248). That action proposed to require a one-time eddy current inspection (ECI) for cracks in the bolt holes of high pressure turbine (HPT) front rotating air seals. That action was prompted by reports of machining anomalies in a bolt hole that led to an HPT front rotating air seal failure. That condition, if not corrected could result in cracks in the bolt holes of HPT front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 121 engines of the affected design in the worldwide fleet. The FAA estimates that 13 engines installed on aircraft of US registry will be affected by this AD, that it would take approximately 300 work hours per engine to accomplish the actions, and that the average labor rate is $60 per work hour. Based on these figures, the

total cost impact of the AD on US operators is estimated to be $234,000.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–22 CFM International: Amendment 39–11632. Docket 99–NE–57–AD.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines, installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, as well as Boeing E–3, E–6, and KC–135 (Military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks in the bolt holes of high pressure turbine (HPT) front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft, accomplish the following:

One-Time Eddy Current Inspections (ECI) Based Upon Engine Model and Thrust Ratings

(a) Perform a one-time ECI for cracks in the bolt holes of HPT front rotating air seals, part number 1282M72P03, and, if necessary, replace with serviceable parts, as follows:

CFM56–3 Series

(1) For CFM56–3–B1 engine nameplate models with HPT front rotating air seals listed by serial number (S/N) in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C Service Bulletin (SB) 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii) of this AD, as applicable.

(2) For CFM56–3B–2 models with maximum thrust limited to 20,100 or 18,500 pounds by the flight management computer (FMC) and aircraft flight manual (AFM), with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii) of this AD, as applicable.

(3) For CFM56–3C–1 models with maximum thrust limited to 20,100 or 18,500 pounds by the FMC and AFM, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii), as applicable.

Compliance Times for (a)(1), (a)(2), and (a)(3)

(4) Use the following compliance times for the engine models listed in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(i) For HPT front rotating air seals with less than 10,000 cycles since new (CSN) on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 13,000 CSN.

(ii) For HPT front rotating air seals with 10,000 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 cycles-in-service (CIS) after the effective date of this AD, or prior to accumulating 20,000 CSN, whichever occurs first.

(5) For CFM56–3B–2 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraphs (a)(7)(i), or (a)(7)(ii) of this AD, as applicable.

(6) For CFM56–3C–1 models with maximum thrust limited to 22,100 pounds by the FMC and AFM, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraphs (a)(7)(i), or (a)(7)(ii) of this AD, as applicable.

Compliance Times for (a)(5) and (a)(6)

(7) Use the following compliance times for the engine models listed in paragraphs (a)(5) and (a)(6) of this AD:

(i) For HPT front rotating air seals with less than 9,800 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 12,800 CSN.

(ii) For HPT front rotating air seals with 9,800 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 CIS after the effective date of this AD, or prior to accumulating 15,800 CSN, whichever occurs first.

(8) For CFM56–3C–1 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, as follows:

(i) For HPT front rotating air seals with less than 9,100 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 12,100 CSN.

(ii) For HPT front rotating air seals with 9,100 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 CIS after the effective date of this AD, or prior to accumulating 15,100 CSN, whichever occurs first.

Uninstalled Parts

(9) Prior to installation in CFM56–3/3B/3C series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, in accordance with Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2 Series

(10) For CFM56–2 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity,

of CFMI CFM56–2 SB 72–869, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, as follows:

(i) For HPT front rotating air seals with less than 9,100 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 10,100 CSN.

(ii) For HPT front rotating air seals with 9,100 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 1,000 CIS after the effective date of this AD, or prior to accumulating 13,100 CSN, whichever occurs first.

Uninstalled Parts

(11) Prior to installation in CFM56–2 series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2 SB 72–869, dated November 12, 1999, in accordance with Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2A Series

(12) For CFM56–2A engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFM56–2A SB 72–470, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, after accumulating 3,000 CSN but before accumulating 6,000 CSN.

Uninstalled Parts

(13) Prior to installation in CFM56–2A series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2A SB 72–470, dated November 12, 1999, in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2B Series

(14) For CFM56–2B engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFM56–2B SB 72–611, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, after accumulating 3,000 CSN but before accumulating 6,000 CSN.

Uninstalled Parts

(15) Prior to installation in CFM56–2B series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2B SB 72–611, dated November 12, 1999, in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB.

Replace Cracked Parts

(16) Prior to further flight, replace cracked HPT front rotating air seals with serviceable parts.

Definition

(b) For the purpose of this AD, an engine shop visit is defined as the next time, after the effective date of this AD, an engine is in the shop for the purpose of maintenance or inspection.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Incorporation by Reference

(d) The inspections shall be done in accordance with the following CFMI SB's: CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999; CFMI CFM56–2 SB 72–869, dated November 12, 1999; CFM56–2A SB 72–470, dated November 12, 1999, and CFM56–2B SB 72–611, dated November 12, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Ferry Flights

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 2, 2000.

Issued in Burlington, Massachusetts, on March 7, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–6552 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–256–AD; Amendment 39–11587; AD 2000–04–05]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Astra SPX Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document adds a line of text that was inadvertently omitted from the applicability of airworthiness directive (AD) 2000–04–05 that applies to certain Israel Aircraft Industries, Ltd., Model Astra SPX series airplanes which was published on February 23, 2000 (65 FR 8848). That AD currently requires a one-time inspection to measure the countersink angle of the bolt holes in the lower scissors fitting of the horizontal stabilizer, and corrective actions, if necessary. This document corrects the applicability to include the serial numbers for Model Astra SPX series airplanes. This correction is necessary to ensure that the appropriate operators accomplish the requirements of the AD.

DATES: Effective March 29, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of March 29, 2000 (65 FR 8848, February 23, 2000).

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2000–04–05, amendment 39–11587, applicable to certain Israel Aircraft Industries, Ltd., Model Astra SPX series airplanes, was published in the **Federal Register** on February 23, 2000 (65 FR 8848). That AD requires a one-time inspection to measure the countersink angle of the bolt holes in the lower scissors fitting of the horizontal stabilizer, and corrective actions, if necessary.

As published, the applicability of AD 2000–04–05 inadvertently omitted ''serial numbers 085 through 112 inclusive'' for Israel Aircraft Industries, Ltd., Model Astra SPX series airplanes.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains March 29, 2000.

§ 39.13 [Corrected]

1. On page 8848, in the third column, the applicability paragraph that precedes Note 1 of AD 2000–04–05 is corrected to read as follows:

* * * * *

Applicability: Model Astra SPX series airplanes, serial numbers 085 through 112 inclusive, certificated in any category.

* * * * *

Issued in Renton, Washington, on March 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7614 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 99F–5523]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on poultry carcass parts. This action is in response to a petition filed by Alcide Corp.

DATES: This rule is effective March 28, 2000. Submit written objections and requests for a hearing by April 27, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 6, 2000 (65 FR 782), FDA announced that a food additive petition (FAP 0A4705) had been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposed to amend the food additive regulation in § 173.325 (21 CFR 173.325) to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on poultry carcass parts.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and, therefore, (3) the regulation in § 173.325 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 27, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.325 is amended by revising paragraph (b) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(b)(1) The additive is used as an antimicrobial agent in poultry processing water in accordance with current industry practice under the following conditions:

(i) As a component of a carcass spray or dip solution prior to immersion of the intact carcass in a prechiller or chiller tank;

(ii) In a prechiller or chiller solution for application to the intact carcass;

(iii) As a component of a spray or dip solution for application to poultry carcass parts; or

(iv) In a prechiller or chiller solution for application to poultry carcass parts.

(2) When used in a spray or dip solution, the additive is used at levels that result in sodium chlorite concentrations between 500 and 1,200 parts per million (ppm), in combination with any GRAS acid at a level sufficient to achieve a solution pH of 2.3 to 2.9.

(3) When used in a prechiller or chiller solution, the additive is used at levels that result in sodium chlorite concentrations between 50 and 150 ppm, in combination with any GRAS acid at levels sufficient to achieve a solution pH of 2.8 to 3.2.

* * * * *

Dated: March 20, 2000.

L. Robert Lake

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7536 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 98F–0567]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of ethylene-octene-1 copolymers, containing not less than 50 weight-percent of polymer units derived from ethylene, as articles or components of food-contact articles. This action is in response to a petition filed by The Dow Chemical Co.

DATES: This rule is effective March 28, 2000. Submit written objections and requests for a hearing by April 27, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 28, 1998 (63 FR 40297), FDA announced that a petition (FAP 8B4601) had been filed by The Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to expand the safe use of ethylene-octene-1 copolymers as articles or components of articles contacting food by lowering the required level of polymer units derived from ethylene to not less than 50 weight-percent.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 27, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379(e).

2. Section 177.1520 is amended by adding paragraph (a)(3)(i)(*a*)(*4*), and in the table in paragraph (c) by adding item ''3.2c'' in numerical order to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(*a*) * * *

(*4*) Olefin basic copolymers manufactured by the catalytic polymerization of ethylene and octene-1 shall contain not less than 50 weight-percent of polymer units derived from ethylene.

* * * * *

(c) * * *

Olefin polymers	Density	Melting Poing (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of the polymer in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
* *	*	*	*	* *
3.2c Olefin copolymers described in paragraph (a)(3)(i)(*a*)(*4*) of this section have a melt flow index no greater than 50 grams per 10 minutes as determined by the method described in paragraph (d)(7) of this section. Articles manufactured using these polymers may be used with all types of food under conditions of use C through H as described in table 2 of § 176.170(c) of this chapter.	0.85–0.92			
* *	*	*	*	* *

* * * * *

Dated: February 29, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7540 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–0126]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for the safe use of N,N′″–1,2-ethanediylbis [N–[3–[[4,6-bis [butyl (1,2,2,6,6-pentamethyl-4-piperidinyl) amino] -1,3,5-triazin-2-yl]amino]propyl]- N′,N″-dibutyl-N′,″-bis (1,2,2,6,6-pentamethyl-4-piperidinyl) -1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in olefin polymers intended for use in contact with food. This action is in response to a petition filed by Ciba Specialty Chemicals Corp.

DATES: This rule is effective March 28, 2000. Submit written objections and requests for a hearing by April 27, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1999 (64 FR 5299), FDA announced that a food additive petition (FAP 9B4639) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) to provide for the safe use of N,N′″–[1,2-ethanediylbis [[[4,6-bis [butyl (1,2,2,6,6-pentamethyl-4-piperidinyl) amino] -1,3,5-triazin-2-yl]imino] -3,1-propanediyl]] bis[N′,N″-dibutyl-N′,N″-bis (1,2,2,6,6-pentamethyl-4-piperidinyl) -1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in olefin polymers intended for use in contact with food. After further evaluation, the agency has determined that the correct name for the subject additive is N,N′″–1,2-ethanediylbis[N–[3-[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazin-2-yl]amino]propyl]-N′,N″-dibutyl-N′,N″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)-1,3,5-triazine-2,4,6-triamine] (CAS Reg. No. 106990–43–6) in accordance with the Chemical Abstracts Service (CAS) 9th Collective Index. This latest CAS name will be used in the regulation.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive as a light/thermal stabilizer in olefin polymers intended for use in contact with food is safe, and (2) the additive will have the intended technical effect. Therefore, the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for FAP 9B4639 (64 FR 5299). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an

environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 27, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * * * *	
N,N‴–1,2–Ethanediylbis[N–[3–[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazin-2-yl]amino]propyl]-N′,N″-dibutyl-N′,N″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)-1,3,5-triazine-2,4,6-triamine] (CAS Reg. No. 106990–43–6)	For use only: 1. At levels not to exceed 0.06 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1a, 1.1b, 1.2, or 1.3. The finished polymers may only be used in contact with food of the Types III, IV–A, V, VI–C, VII–A, and IX as described in table 1 of § 176.170(c) of this chapter, and under conditions of use A through H as described in table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.08 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter. The finished polymers may only be used in contact with food of the Types I, II, IV–B, VI–A, VI–B, VII–B, and VIII as described in table 1 of § 176.170(c) of this chapter, and under conditions of use A through H as described in table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: March 8, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7537 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–0298]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aluminum, hydroxybis[2,4,8,10-tetrakis (1,1-dimethylethyl)-6-hydroxy-12H-dibenzo[d,g][1,3,2]dioxaphosphocin 6-oxidato]- as a clarifying agent for polypropylene and polypropylene copolymers intended for use in contact with food. This action responds to a petition filed by Asahi Denka Kogyo K.K.

DATES: This rule is effective March 28, 2000; submit written objections and requests for a hearing by April 27, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 3, 1999 (64 FR 10304), FDA announced that a food additive petition (FAP 9B4638) had been filed by Asahi Denka Kogyo K.K., 2–13, Shirahata 5-chome, Urawa City Saitama 336, Japan. The petition proposed to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the safe use of aluminum, hydroxybis[2,4,8,10-tetrakis(1,1-dimethylethyl)-6-hydroxy-12H-dibenzo[d,g][1,3,2]dioxaphosphocin 6-oxidato]- as a clarifying agent for polypropylene and polypropylene

copolymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.3295 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4638 (64 FR 10304). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before April 27, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3295 is amended in the table by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
Aluminum, hydroxybis[2,4,8,10-tetrakis(1,1-dimethylethyl)-6-hydroxy-12H-dibenzo[d,g][1,3,2]dioxaphosphocin 6-oxidato]-(CAS Reg. No. 151841–65–5).	For use only as a clarifying agent at levels not to exceed 0.25 percent by weight of polypropylene and polypropylene copolymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2. The finished polymers contact food only of types I, II, IV-B, VI-B, VII-B, and VIII as identified in Table 1 of § 176.170(c) of this chapter, under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter or foods only of types III, IV-A, V, VI-A, VI-C, VII-A, and IX as identified in Table 1 of § 176.170(c) of this chapter, under conditions of use C through G described in Table 2 of § 176.170(c) of this chapter.
* * * *	* * *

Dated: February 28, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7539 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8853]

RIN 1545–AV07

Recharacterizing Financing Arrangements Involving Fast-Pay Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on January 10, 2000 (65 FR 1310), that recharacterize, for tax purposes, financing arrangements involving fast-pay stock.

DATES: This correction is effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan Zelnick, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 7701(l) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8853) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8853), which were the subject of FR Doc. 00–114, is corrected as follows:

§ 1.7701(l)–3 [Corrected]

1. On page 1316, in § 1.7701(l)–3(g)(2)(iii) *Example 1,* paragraph (ii)(C)(*2*), in the third column of the table, the heading ''Amortizable premium'' is corrected to read ''Accrued discount''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5235 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8849]

RIN 1545–AW57

Section 663(c); Separate Share Rules Applicable to Estates; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Tuesday, December 28, 1999 (64 FR 72540), relating to separate share rules applicable to estates under section 663(c) of the Internal Revenue Code.

DATES: This correction is effective December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Laura Howell at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under 663(c) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8849) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8849), which were the subject of FR Doc. 99–32694, is corrected as follows:

1. On page 72542, in the preamble, 3rd column, under the heading ''Effective Dates'', line 4, the language ''with respect to decedents who die after'' is corrected to read ''with respect to decedents who die on or after''.

§ 1.663(c)–5 [Corrected]

2. On page 72544, column 3, § 1.663(c)–5 *Example 4(i),* lines 6 and 7, the language, ''the child in the amount needed to reduce the estate taxes to zero and a bequest of the'' is corrected to read ''the child of the largest amount that can pass free of Federal estate tax and a bequest of the''.

§ 1.663(c)–6 [Corrected]

3. On page 72545, column 3, § 1.663(c)–6, line 5, the language ''decedents who die after December 28,'' is corrected to read ''decedents who die on or after December 28,''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5236 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8859]

RIN 1545–AV44

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Friday, January 14, 2000 (65 FR 2323), affecting owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

DATES: This correction is effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Handleman at (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

Need for Correction

As published, the final regulations (TD 8859) contain errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8859), which were the subject of FR Doc. 00–111, is corrected as follows:

§ 1.42–5 [Corrected]

1. On page 2327, column 2, § 1.42–5(c)(1)(xi), line 14, the language ''1437s'' is corrected to read ''1437f''.

§ 1.42–6 [Corrected]

2. On page 2328, column 1, Instructional Par. 3, paragraph 1, in line 4, the language ''Report'''' is corrected to read ''Report,'''' and in line 6, the language ''Report' '' is corrected to read ''Report,' ''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5239 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8869]

RIN 1545–AU77

Subchapter S Subsidiaries; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3843), relating to the treatment of corporate subsidiaries of S corporations and interpret the rules added to the Internal Revenue Code by section 1308 of the Small Business Job Protection Act of 1996.

DATES: This correction is effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Sullivan at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 1361, 1362, and 1374 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8869) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8869), which wer the subject of FR Doc. 00–1718, is corrected as follows:

1. On page 3845, column 1, under the caption ''Explanation of Provisions'', line 14 from the top of the column, the language, ''2 I.R.B.1, which provides that the'' is corrected to read ''2 I.R.B. 288, which provides that the''.

§ 1.1361–4 [Corrected]

2. On page 3852, column 2, § 1.1361–4(d) *Example 3*, line 15, the language, ''2000, the day after the acquisition date'' is corrected to read ''2002, the day after the acquisition date''.

§ 1.1361–5 [Corrected]

3. On page 3853, column 1, § 1.1361–5(b)(1)(i), line 9, the language, ''corporation. he tax treatment of this'' is corrected to read ''corporation. The tax treatment of this''.

§ 1.1362–8 [Corrected]

4. On page 3855, column 3, § 1.1362–8(d) Example 2(ii), line 1, the language, ''(ii) Four-fifths ($12,000/15,000) of the'' is corrected to read ''(ii) Four-fifths ($12,000/$15,000) of the''.

5. On page 3855, column 3, § 1.1362–8(d) Example 2(ii), line 13, the language, ''Under these facts, $41 ($920/1,900 of'' is corrected to read '' Under these facts, $41 ($920/$1,900 of''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5242 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8865]

RIN 1545–AS77

Amortization of Intangible Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3820), relating to the amortization of certain intangible property.

DATES: This correction is effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: John Huffman at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 167 and 197 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8865) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8865), which were the subject of FR Doc. 00–1380, is corrected as follows:

§ 1.197–2 [Corrected]

1. On page 3834, column 3, § 1.197–2(g)(3), line 22, the language, ''increase. The provisions of paragraph'' is corrected to read ''increase, except as provided in § 1.743–1(j)(f)(i)(B)(*2*). The provisions of paragraph''.

2. On page 3834, column 3, § 1.197–2(g)(4)(i), lines 10 through 13, the language, ''either the curative or remedial allocation methods described in the regulations under section 704(c). See § 1.704–3(c) and (d)'' is corrected to read ''any of the permissible methods described in the regulations under section 704(c). See § 1.704–3''.

3. On page 3834, column 1, § 1.197–2(g)(4)(ii), line 6, the language, ''the intangible is not amortizable by the'' is corrected to read ''the intangible is not amortizable under section 197 by the ''.

4. On page 3839, column 3, § 1.197–2(k) *Example 6*(i), third line from the top of the column, the language ''consideration paid for all assets acquired in'' is corrected to read ''consideration paid excluding any amount treated as interest or original issue discount under applicable provisions of the Internal Revenue Code, for all assets acquired in''.

5. On page 3839, column 3, § 1.197–2(k) *Example 6*(ii), lines 15 through 18, the language, ''Although the payments under the agreement ($270,000) exceed the amount allocated to the covenant by $45,000, all of the remaining consideration ($50,000) is allocated to Class'' is corrected to read ''All of the remaining consideration after allocation to the covenant and other Class VI assets, ($50,000) is allocated to Class''.

6. On page 3839, column 3, § 1.197–2(k) *Example 7*(ii), line 7, the language, ''amecause it does not have a term of less than'' is corrected to read ''amount because it does not have a term of less than''.

7. On page 3843, column 1, § 1.197–2(k) *Example 27*(i), lines 3 and 4, the language, ''which A owns a 60-percent, and B owns a 40-percent, interest in profits and capital. A'' is corrected to read ''which A owns a 40-percent, and B owns a 60-percent, interest in profits and capital. A''.

8. On page 3843, column 2, § 1.197–2(l)(4)(iii), line 14, the language, ''before a federal court, the taxpayer must'' is corrected to read ''before a Federal court, the taxpayer must''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5246 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8852]

RIN 1545–AT52

Passthrough of Items of an S Corporation to Its Shareholders; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of Correction to final regulations.

SUMMARY: This document contains a correction to a correction to final regulations which was published in the **Federal Register** on Thursday, March 9, 2000 (65 FR 12471), relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders,

and the treatment of distributions by an S corporation.

DATES: This correction is effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, Deane Burke, or David Shulman at (202) 622–3070, or Brenda Stewart at (202) 622–3120 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The correction to final regulations that are subject to this correction is under sections 1366, 1367, and 1368 of the Internal Revenue Code.

Need for Correction

As published, the correction to final regulations (TD 8852) contains a typographical error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction of the final regulations (TD 8852), which was the subject of FR Doc. 00–5244, is corrected as follows:

§ 1.1367–1 [Corrected]

1. On page 12471, third column, the penultimate line of the correction for § 1.1367–1, the reference ''§ 1.1377(b)(1)'' is corrected to read ''§ 1.1377–1(b)(1)''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–6693 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8870]

RIN 1545–AV39

General Rules for Making and Maintaining Qualified Electing Fund Elections; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Monday, February 7, 2000 (65 FR 5777), relating to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 to treat the PFIC as a qualified electing fund, and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis.

DATES: This correction is effective February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Margaret A. Fung, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 1291, 1293, 1295 and 1298 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8870) contain errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8870), which were the subject of FR Doc. 00–1892, is corrected as follows:

PART 1—[CORRECTED]

1. On page 5779, beginning in column 1, instructional Paragraph 1, and the authority citation are corrected to read as follows:

Paragraph 1. The authority citation for part 1 is amended by removing the entries for 1.1291–1T, 1.1293–1T, 1.1295–1T, and 1.1295–3T, and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sec. 1.1291–1 also issued under 26 U.S.C. 1291. * * *

Sec. 1.1293–1 also issued under 26 U.S.C. 1293. * * *

Sec. 1.1295–1 also issued under 26 U.S.C. 1295.

Sec. 1.1295–3 also issued under 26 U.S.C. 1295. * * *

§ 1.1293–0 [Corrected]

2. On page 5779, column 2, a new instructional paragraph 2a. is added to read as follows:

Par. 2a. Section 1.1293–0 is amended by:

1. Removing the reference ''1.1293–1T'' in the introductory text of the section and adding ''1.1293–1'' in its place.

2. Removing the ''T'' and the parenthetical ''(temporary)'' from the entry for § 1.1293–1T.

§ 1.1295–0 [Corrected]

3. On page 5779, column 2, instruction 5 of instructional Par. 4. is corrected by removing the reference ''1.195–3'', and adding ''1.1295–3'' in its place.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–6257 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8856]

RIN 1545–AX44

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to final regulations (TD 8856) which were published in the **Federal Register** on Thursday, December 30, 1999 (64 FR 73408), relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

DATES: This correction is effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Laurie Hatten-Boyd at (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8856) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8856), which were the subject of FR Doc. 99–33515, is corrected as follows:

§ 1.1441–1 [Corrected]

1. On page 73409, column 2, § 1.1441–1(f)(2)(i), line 24, the language,

''valid after December 31, 2001. The rule'' is corrected to read ''valid after December 31, 2000. The rule''.

§ 1.1441–6 [Corrected]

2. On page 73410, column 2, § 1.1441–6(g)(2), line 10, the language ''Form 1001 or 8233 is valid on or after'' is corrected to read ''Form 1001 or 8233 that is valid on or after''.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5247 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2001

[Directive No. 1; Appendix A]

RIN 3095–AA92

Information Security Oversight Office; Classified National Security Information; Correction

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: The Information Security Oversight Office, NARA, published in the **Federal Register** of September 13, 1999, a final rule establishing a uniform referral standard that Federal agencies must use for multi-agency declassification issues. Inadvertently, we omitted the term and definition of ''Equity.'' This document provides the missing text.

DATES: Effective on October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: 202–219–5250.

SUPPLEMENTARY INFORMATION: ISOO published a final rule document in the **Federal Register** of September 13, 1999, (64 FR 49388) adding a new § 2001.55 to Subpart E. The term and definition of ''Equity'' was inadvertently dropped from the text of the rule. This correction provides the definition for ''Equity.''

In the document FR 99–23800 published on September 13, 1999, (99 FR 49388) make the following correction.

On page 49389, in the second column, in § 2001.55, paragraph (d), add the definition of ''Equity'' in alphabetical order to read as follows:

§ 2001.55 Document referral.

* * * * *

(d) * * *

''*Equity* means information originally classifed by or under the control of an agency, as control is defined in section 1.1(b) of E.O. 12958.''

* * * * *

Dated: March 22, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–7604 Filed 3–27–00; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD059–3049a; FRL–6564–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because we received adverse comments, EPA is withdrawing the direct final rule to approve Maryland's Post-1996 Rate-of-Progress plan for the Cecil County portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. In the direct final rule published on February 3, 2000 (65 FR 5252), we stated that if we received adverse comment by March 6, 2000, we would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comments. We will address those comments in a final rule based upon the proposed rule also published on February 3, 2000 (65 FR 5296). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The addition of 40 CFR 52.1075(h) and 52.1076(e) is withdrawn as of March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney (215) 814–2092.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone.

Dated: March 19, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

Accordingly, the addition of 40 CFR 52.1075(h) and 52.1076(e) is withdrawn as of March 28, 2000.

[FR Doc. 00–7625 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. ID–01–0001; FRL–6566–2]

Approval and Promulgation of Municipal Solid Waste Landfills State Plan for Designated Facilities and Pollutants: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State of Idaho's section 111(d) State Plan for controlling emissions from existing Municipal Solid Waste (MSW) Landfills. The plan was submitted on December 16, 1999, to fulfill the requirements of section 111(d) of the Clean Air Act. The State Plan adopts and implements the Emissions Guidelines applicable to existing MSW Landfills, and establishes emission limits and controls for sources which commenced construction, reconstruction, or modification before May 30, 1991. EPA has determined that Idaho's State Plan meets CAA requirements and hereby approves this State Plan, thus making it federally enforceable.

DATES: This action will be effective on May 30, 2000 without further notice, unless EPA receives relevant adverse comments by April 27, 2000. If EPA receives such comments, then it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of materials submitted to EPA may be examined during normal business hours at the following location: US EPA, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever we, us or our is used, this refers to EPA. Information regarding this action is presented in the following order:

I. EPA Action

What Action Is EPA Taking Today?

We are approving the State of Idaho's section 111(d) State Plan for controlling emissions from existing Municipal Solid Waste (MSW) Landfills. Idaho submitted its State Plan on December 16, 1999, to fulfill the requirements of section 111(d) of the Clean Air Act (CAA). The State Plan adopts and implements the Emissions Guidelines (EG) applicable to existing MSW Landfills, and establishes emission limits and controls for sources which commenced construction, reconstruction, or modification before May 30, 1991. This approval, once effective, will make the Idaho MSW Landfills rules included in the plan federally enforceable.

Why Is EPA Taking This Action?

We have evaluated Idaho's MSW Landfills State Plan for consistency with the CAA, EPA guidelines and policy. We have determined that Idaho's State Plan meets all requirements, and, therefore, we are approving Idaho's plan to implement and enforce the standards applicable to existing MSW Landfills.

Who Is Affected by Idaho's State Plan?

Idaho's State Plan regulates all the sources designated by EPA's EG for existing MSW Landfills which commenced construction, reconstruction, or modification before May 30, 1991. If your facility meets this criteria, then you are subject to these regulations.

How Does This Approval Affect Sources Located in Indian Country?

Idaho's State Plan does not cover facilities located in Indian Country. Therefore, any sources located in Indian Country are subject to the Federal plan (see below).

How Does This Approval Relate to the Federal Plan?

On November 8, 1999, we finalized a Federal Plan for MSW Landfills which covers sources located in Indian Country and sources for which there is no approved State Plan. This plan is codified at 40 CFR part 62, subpart GGG, and became effective on January 7, 2000. All existing MSW Landfills in Idaho, including those in Indian Country, are currently subject to the requirements in this Federal Plan (see 64 FR 60689, November 8, 1999). However, as of the effective date of this action approving Idaho's MSW Landfills State Plan, existing MSW Landfills within Idaho's jurisdiction will be subject to Idaho's State Plan, and will no longer be subject to the Federal Plan. Furthermore, MSW Landfills located in Indian Country are currently subject to the Federal Plan and will continue to be subject to the Federal Plan only.

II. Background

What Is a State Plan?

Section 111 of the CAA, ''Standards of Performance for New Stationary Sources,'' authorizes us to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS is promulgated for new sources, section 111(d) also requires that we publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into the State's body of regulations. States must also include in their State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

What Is a MSW Landfills State Plan?

A MSW Landfills State Plan is a State Plan (as described above) that controls air pollutant emissions from existing Municipal Solid Waste Landfills.

Why Are We Requiring Idaho To Submit a MSW Landfills State Plan?

When we developed NSPS for MSW Landfills, we simultaneously developed the EG to control air emissions from existing MSW Landfills (see 61 FR 9919, March 12, 1996). Under section 111(d) of the CAA, the EG are not federally enforceable; therefore, section 111(d) of the CAA also requires states to submit to EPA for approval State Plans that implement and enforce the EG. These State Plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA. The procedures for adopting and submitting State Plans are located in 40 CFR part 60, subpart B. If a State fails to have an approvable plan in place by December 12, 1996, the EPA is required to promulgate a Federal plan to establish requirements for those sources not under an EPA-approved State Plan. EPA promulgated a Federal Plan for MSW Landfills on November 8, 1999. Existing MSW Landfills are subject to the Federal Plan until the State Plan is approved and in effect.

What Are the Requirements for a MSW Landfills State Plan?

A section 111(d) State Plan submittal must meet the requirements of 40 CFR part 60, subpart B, §§ 60.23 through 60.26; 40 CFR part 60, subpart Cc, §§ 60.30(c) through 60.36(c); and it must be consistent with the requirements established in the Federal Plan for MSW Landfills. Subpart B contains the procedures for adoption and submittal of State Plans. This subpart addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements. EPA promulgated the EG as 40 CFR part 60, subpart Cc on March 12, 1996, and amended the EG on June 16, 1998, and February 24, 1999. Subpart Cc contains the technical requirements for existing MSW Landfills and applies to sources which commenced construction, reconstruction, or modification before May 30, 1991. A State will generally address the MSW Landfills technical requirements by adopting by reference subpart Cc. The Federal Plan also contains the technical requirements for existing MSW Landfills with the same applicability. EPA promulgated the MSW Landfills Federal Plan on November 8, 1999. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, i.e., by December 12, 1996. Prior to submittal to us, the State must make available to the public the State Plan and provide opportunity for public comment. For States that submit their State Plans after December 12, 1996, the requirements within their State Plans (including compliance timelines) must be as protective as the Federal Plan. Idaho has developed and submitted a State Plan, as required by section 111(d) of the CAA, to gain federal approval to implement and enforce the MSW Landfills EG.

III. Idaho's State Plan

What Is Contained in the Idaho State Plan?

The State of Idaho submitted its section 111(d) State Plan on December

16, 1999, for implementing EPA's EG for existing MSW Landfills. Idaho adopted the EG requirements into IDAPA 16.01.01.860 (effective November 19, 1999) entitled, ''Emission Guidelines for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, Or Modification Before May 30, 1991.'' Idaho's section 111(d) Plan contains:

(1) A demonstration of the State's legal authority to implement the section 111(d) State Plan;

(2) State Rules adopted into 16.01.01.860 as the mechanism for implementing and enforcing the State Plan;

(3) Emission inventories of all Idaho's applicable sources. There are over 100 existing MSW Landfills in Idaho's inventory, including several closed facilities which are subject to the initial reporting requirements of the EG and the procedures for notification of modification as prescribed under 40 CFR 60.7(a)(4). Many of the listed landfills will not exceed the design capacity threshold for which compliance requirements have been established. These landfillls will only be required to submit their initial design capacity reports and their initial emission rate reports. In these inventories, all designated pollutants have been identified and data have been provided for each;

(4) Emission limits that are as protective as the EG;

(5) Enforceable compliance schedules for all sources which will take more than 12 months from the effective date of the State Plan to comply with all emission standards. The State Plan also indicates within its regulations a final compliance date which is at least as protective as the date required by the Federal Plan;

(6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

(7) Records for the public notice and hearing; and

(8) Provisions for Idaho's progress reports to EPA.

What Approval Criteria Did We Use To Evaluate Idaho's State Plan?

We reviewed Idaho's MSW Landfills State Plan for approval against the following criteria: 40 CFR part 60, subpart B, §§ 60.23 through 60.26; 40 CFR part 60, subpart Cc, §§ 60.30(c) through 60.36(c); and the Federal Plan for MSW Landfills. A detailed discussion of our evaluation of Idaho's State Plan is included in our technical support document located in the official file for this action and available from the EPA contact listed above. We have determined that Idaho's MSW Landfills State Plan meets all of the applicable approval criteria.

IV. EPA Rulemaking Action

We are approving, through direct final rulemaking action, Idaho's section 111(d) State Plan for MSW Landfills. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the Idaho State Plan should relevant adverse comments be filed. This action will be effective on May 30, 2000 without further notice, unless EPA receives relevant adverse comments by April 27, 2000.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 30, 2000 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action,'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 30, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal Solid Waste Landfills, Non-methane organic compounds, Reporting and recordkeeping requirements.

Dated: March 14, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart N—Idaho

2. Subpart N is amended by adding § 62.3120 and an undesignated center heading to read as follows:

* * * * *

Control of Non-Methane Organic Compounds Emissions From Existing Municipal Solid Waste Landfills

§ 62.3120 Identification of plan.

(a) The Idaho Division of Environmental Quality submitted to the Environmental Protection Agency a State Plan for the control of air emissions from Municipal Solid Waste Landfills on December 16, 1999.

(b) Identification of Sources: The Idaho State Plan applies to all existing Municipal Solid Waste Landfills which commenced construction, reconstruction, or modification before May 30, 1991, as described in 40 CFR part 60, subpart Cc. (This plan does not apply to facilities on tribal lands).

(c) The effective date for the portion of the plan applicable to existing Municipal Solid Waste Landfills is May 30, 2000.

[FR Doc. 00–7619 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IN193–1a; FRL–6566–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Indiana; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Indiana State Plan submittal for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State submitted this plan on September 30, 1999 in accordance with requirements found in the Clean Air Act (CAA) and in the Code of Federal Regulations for adoption and submittal of State plans for designated facilities. The plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. The EPA finds that Indiana's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans. EPA's approval of the State's MSW Landfill Plan also includes rules submitted to EPA on November 21, 1995, and February 14, 1996, as volatile organic compound control measures. EPA approved the rules as part of the Indiana SIP on January 17, 1997. In this action, EPA is incorporating the rule revisions into the Indiana MSW Landfill Plan.

DATES: The ''direct final'' rule is effective on May 30, 2000, unless EPA receives adverse written comments by April 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used we mean EPA.

Background

I. Why Was This Plan Prepared and Submitted?

Under section 111(d) of the Act and 40 CFR part 60, subpart B, EPA has established procedures for States to submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not

''criteria pollutants'' (*i.e.,* pollutants for which EPA has established National Ambient Air Quality Standards (NAAQS) under sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, it simultaneously establishes emissions guidelines in accordance with 40 CFR 60.22. This provision contains information on the control of the designated pollutant from that NSPS source category (*i.e.,* the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the emission guideline for that source category, as well as with 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c), and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759) (See 61 FR 9905–9929.). The pollutant regulated by the NSPS and EG is ''MSW landfill gas emissions'', which contain a mixture of methane and non-methane organic compounds. Non-methane organic compounds (NMOC) consist of volatile organic compounds (VOC), hazardous air pollutants (HAPs), and odorous compounds. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine if control is required, NMOCs are measured as a surrogate for MSW landfill gas emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

40 CFR 60.23(a) requires States to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG (*i.e.,* by December 12, 1996). If there were no designated facilities in the State, then the State was required to submit a negative declaration by December 12, 1996.

II. What Elements Are Included in the EPA Review Indiana's MSW Landfill Plan?

The EPA has reviewed Indiana's section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subpart B and subpart Cc, as follows:

A. Identification of Enforceable State Mechanism for Implementing the Emission Guidelines (EG)

The Indiana Air Pollution Control Board adopted amendments to 326 IAC 8–8–2, 8–8–3, 8–8–4 and new rule 8–8.1 on April 10, 1997. Indiana filed these rules with the Secretary of State on September 8, 1997. These rules became effective on October 8, 1997. Indiana published a notice of the adoption of these rules in the Indiana Register (21 IR 30) on October 1, 1997. Indiana also submitted a November 1, 1996 Findings and Determination by the Commissioner of the Indiana Department of Environmental Management (IDEM) related to the adoption of this rule, copies of public hearing notices and hearing transcripts as part of the 111(d) plan.

It should be noted that on November 21, 1995, and February 14, 1996, Indiana submitted 326 IAC 8–8 Municipal Solid Waste Landfills Located in Clark, Floyd, Lake and Porter Counties, sections 1 through 4, as a requested revision to the Indiana SIP. The Indiana Air Pollution Control Board adopted these rules on July 12, 1995, and filed them with the Secretary of State on December 19, 1995. The rules became effective on January 18, 1996. Indiana published these rules on February 1, 1996 at Indiana Register, Volume 19, Number 5, page 1050. On January 17, 1997 (62 FR 2591), EPA approved these rules into the Indiana SIP at 40 CFR 52.770(c)(110). By this action, EPA is also incorporating them into the Indiana Municipal Solid Waste Landfill Plan for Clark, Floyd, Lake, and Porter Counties.

Thus, the State has met the requirement of 40 CFR 60.24(a) to have legally enforceable emission standards.

B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires the section 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules.

The Indiana Code (IC) divides legal authority for environmental rule adoption and rule development and implementation between the Indiana Air Pollution Control Board (IAPCB) and IDEM. The IAPCB has the legal authority to adopt rules governing landfill gas emissions from existing MSW landfills. The IDEM has authority for rule development and implementation. These responsibilities are spelled out in Titles 4 and 13 of the IC. Under the IC, the APCB and IDEM have sufficient legal authority to carry out the plan.

C. Inventory of Existing MSW Landfills in the State Affected by the State Plan

40 CFR 60.25(a) requires the section 111(d) plan to include a complete source inventory of all existing MSW landfills (*i.e.,* those MSW landfills that were constructed, reconstructed, or modified prior to May 30, 1991) in the State that are subject to the plan. This includes all existing landfills that have accepted waste since November 8, 1987 or that have additional capacity for future waste deposition.

Indiana submitted a list of the existing MSW landfills in Indiana and an estimate of NMOC emissions from each landfill as part of its landfill plan.

D. Inventory of Emissions From Existing MSW Landfills in the State

40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG, which, in the case of MSW landfills, is NMOC. Indiana included an estimation of NMOC emissions for all of the landfills in the State using the Landfill Air Emissions Estimation Model and AP–42 default emission factors in Appendices B and D to its section 111(d) plan.

E. Emission Limitations for MSW Landfills

40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than those specified in 40 CFR 60.33c for existing MSW landfills. However, 40 CFR 60.24(f) allows for States to implement less stringent emission limits on a case-by-case basis if certain conditions are met.

Indiana's rules require existing MSW landfills to comply with the same level of control as prescribed in the NSPS. The controls and control system design criteria required by the NSPS are the same as those required by the EG. Thus, the emission standards implemented by Indiana are ''no less stringent than'' subpart Cc, which meets the requirements of 40 CFR 60.24(c).

Section 60.24(f) allows States, in certain case-by-case situations, to provide for a less stringent emission standard. Indiana's rules, 326 IAC 8–8.1–5 allow an owner/operator of a landfill that has been issued a closure certification, has an approved post-closure plan, and can demonstrate unreasonable cost, physical impossibilities, or other significant obstacles in complying with the standard emission limits, to apply for a less stringent standard. An owner/operator of a landfill seeking an alternative emission limit must submit a written request to IDEM and receive approval from IDEM and EPA pursuant to 40 CFR 60.24(f). The criteria in 325 IAC 8–8.1–5 parallel those contained in 40 CFR 60.24(f).

Thus, IDEM's plan meets the emission limitation requirements by requiring emission limitations that are no less stringent than the EG.

F. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans

40 CFR 60.33c(b) in the EG requires State plans to include a process for State review and approval of site-specific design plans for required gas collection and control systems.

The IAPCB's rules regulating landfill gas emissions from MSW landfills essentially make the federal NSPS applicable to existing MSW landfills. The design criteria and the design specifications for active collection systems specified in the NSPS also apply to existing landfills, unless a request pursuant to 40 CFR 60.24(f) has been approved by the IDEM and by EPA. Once IDEM receives a design plan, it will record the date the plan is received. IDEM will then review the submittal for completeness and request additional information if necessary. Indiana will complete its review of the design plan within 180 days of its receipt.

Thus, Indiana section 111(d) plan adequately addresses this requirement.

G. Compliance Schedules

The State's section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. 40 CFR 60.36c provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a State emission standard for MSW landfills. 40 CFR 60.24(e)(1) provides that any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance.

IAPCB has adopted enforceable compliance schedules in 326 IAC 8–8.1–4. The State's rules require landfills that must install collection and control systems to be in final compliance with the requirements of the State plan no later than 30 months from the effective date of State adoption of the State rule or, for those MSW landfills which are not currently subject to the collection and control system requirements, within 30 months of first becoming subject to such requirements (*i.e.,* within 30 months of reporting a NMOC emission rate of 50 Mg/yr or greater). Section 8–8–4 which regulates sources located in Clark, Floyd, Lake and Porter Counties requires affected sources to comply with the requirement of the Indiana MSW Landfill rule no later than May 1, 1996. Thus, the State's rule satisfies the requirement of 40 CFR 60.36c.

H. Testing, Monitoring, Recordkeeping and Reporting Requirements

40 CFR 60.34c specifies the testing and monitoring provisions that State plans must include (60.34c actually refers to the NSPS requirements found in 40 CFR 60.754 to 60.756), and 40 CFR 60.35c specifies the reporting and recordkeeping requirements (§ 60.35c refers to the NSPS requirements found in 40 CFR 60.757 and 60.758). The IAPCB has adopted rules incorporating these pertinent Federal requirements. Consequently, EPA finds that the State's section 111(d) plan for MSW landfills adequately addresses the testing, monitoring, reporting, and recordkeeping requirements of the EG.

I. A Record of Public Hearings on the State Plan

40 CFR 60.23 contains the requirements for public hearings that must be met by the State in adopting a section 111(d) plan. EPA's ''Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfill Emission Guidelines (EPA–456R/96–005, October 1996)'' contains additional guidance on this requirement. Indiana included documents in its plan submittal demonstrating that it complied with these procedures, as well as the State's administrative procedures, in adopting the State's plan. Therefore, EPA finds that Indiana has adequately met this requirement.

J. Submittal of Annual State Progress Reports to EPA

40 CFR 60.25(e) and (f) require States to submit to EPA annual reports on the progress of plan enforcement. Indiana committed in the submittal for its section 111(d) plan to submit annual progress reports to EPA. The first progress report will be submitted by the State one year after EPA approval of the State plan. This commitment is part of section 15 #98–1 of IDEM's policy and procedures notebook. Section 15 #98–1 which was revised on May 20, 1998 details how Indiana intends to implement its MSW Landfill Plan.

III. EPA Final Action

Based on the rationale discussed above, EPA is approving Indiana's September 30, 1999, submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills. EPA is also incorporating the rules for controlling VOC emissions from existing MSW landfills located in Clark, Floyd, Lake and Porter Counties into the State's 111(d) plan. Indiana originally submitted these rules, contained in 326 IAC 8–8, to EPA as part of the Indiana Ozone Plan on November 21, 1995 and February 14, 1996. EPA approved these rules as part of the Ozone SIP on January 17, 1997 (62 FR 2593). EPA codified its approval of these State rules at 40 CFR 52.770(c)(110). As provided by 40 CFR 60.28(c), any revisions to Indiana's section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective May 30, 2000, unless, by April 27, 2000, adverse written comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule

based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 30, 2000.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 30, 2000, unless EPA receives adverse written comments by April 27, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 30, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Non-methane organic compounds, Reporting and recordkeeping requirements.

Dated: March 17, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Subpart P is amended by adding a new center heading and sections 62.3630, 62.3631 and 62.3632 to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.3630 Identification of plan.

''Section 111(d) Plan for Municipal Solid Waste Landfills'' and the associated State regulations found in Title 326: Air Pollution Control Board of the Indiana Administrative Code (IAC), Article 8. Volatile Organic Compound Rules, Rule 8. Municipal Solid Waste Landfills Located in Clark, Floyd, Lake and Porter Counties and Rule 8.1. Municipal Solid Waste Landfills Not Located in Clark, Floyd, Lake and Porter Counties added at 21 Indiana Register 31, filed with the Secretary of State September 8, 1997, effective October 8, 1997, submitted by the State to EPA on September 30, 1999. Also included in this plan are rules submitted to EPA on November 21, 1995 and February 14, 1996: Title 326 IAC Article 8. Volatile Organic Compound Rules, Rule 8. Municipal Solid Waste Landfills adopted at 19 Indiana Register 1050, filed with the Secretary of State December 19, 1995, effective January 18, 1996.

§ 62.3631 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.3632 Effective date.

The effective date of the plan for municipal solid waste landfills is May 30, 2000.

[FR Doc. 00–7621 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 96–111; FCC 99–325]

Earth Stations Communicating With Non-U.S. Licensed Space Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of November 15, 1999, (64 FR 61791), a document revising rules governing application requirements for earth stations communicating with non-U.S. licensed space stations. The Commission inadvertently failed to specify that it was revising only the first sentence of § 25.137(b), rather than § 25.137(b) in its entirety. This document corrects that error.

DATES: Effective on December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, International Bureau, (202) 418–1539.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** on November 15, 1999 (64 FR 61791) amending 47 CFR 25.137(b). In FR Doc. 99–29538, published in the **Federal Register** of November 15, 1999 (64 FR 61791), everything in § 25.137(b) after the first sentence was inadvertently removed. This correction adds the part of § 25.137(b) inadvertently removed on November 15, 1999.

§ 25.137 [Corrected]

In rule FR Doc. 99–29538 published on November 15, 1999, (64 FR 61791) make the following correction. On page 61792, in the third column, revise § 25.137(b) to read as follows:

* * * * *

(b) Earth station applicants, or entities filing a ''letter of intent,'' or ''Petition for Declaratory Ruling,'' requesting authority to operate with a non-U.S. licensed space station must attach to their FCC Form 312 an exhibit providing legal, financial, and technical information for the non-U.S. licensed space station in accordance with part 25 and part 100 of this Chapter. If the non-U.S. licensed space station is in orbit

and operating, the applicant need not include the financial information specified in §§ 25.114(c)(17) and (c)(18) of this part. If the international coordination process for the non-U.S. licensed space station has been completed, the applicant need not include the technical information specified in §§ 25.114(c)(5) through (c)(11) and (c)(14) of this part, unless the technical characteristics differ from the characteristics established in that process.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7596 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 64

[CC Docket No. 99–253; FCC 00–78]

Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the document, the Commission is completing the first phase of our Comprehensive Accounting Requirements and ARMIS Reporting Requirements review by adopting most of our proposals initiated in our Phase 1 Notice of Proposed Rulemaking (NPRM). This document also grants significant accounting relief to incumbent local exchange carriers (ILECs). The Commission anticipates that the rule changes adopted will reduce regulatory and procedural burdens on ILECS.

DATES: Effective September 28, 2000. The rules in this document contain information collections, which have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

Written comments by the public on the new and/or modified information collections are due May 30, 2000.

ADDRESSESS: Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–0873 or Mika Savir, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–0384. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted March 2, 2000, and released March 8, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, Washington, DC 20036, telephone (202) 857–3800.

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (RA), Public Law 10413. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act

This R&O contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 30, 2000. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Type of Review: Revision of currently approved collections.

Respondents: Business or other for-profit.

OMB control No.	Title	Number of respondents	Est. time per respondent	Total annual responses	Cost to per respondents
3060–0395	ARMIS USOA Report (FCC Report 43–02).	50	295.4	14,770	$0
3060–0370	Part 32	239	9543.6	2,280,934	0
3060–0384	Section 64.904	14	250	3,500	1,200,000
3060–0470	Sections 64.901–64.903	18	600	10,800	0
3060–0734	Affiliates Transactions	20	24	480	0

Needs and Uses: In the Report and Order, the Commission is completing the first phase of its Comprehensive Accounting and ARMIS review by adopting most of its proposals initiated in its Phase 1 NPRM, 64 FR 44877 (August 18, 1999). In the Report and Order, the Commission eliminates the expense matrix filing requirement; provides large ILECs the option to obtain a biennial attestation engagement to satisfy their CAM audit obligation; establishes a $500,000 de minimis exception to our affiliate transactions fair market value estimate requirement; and eliminates the 15 day pre-filing requirement for cost pool and time reporting procedures changes. The Commission substantially streamlines the ARMIS 43–02 USOA report and significantly reduces the reporting requirements for carriers. The information provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Summary of Report and Order

1. Expense Matrix

We adopt our proposal to eliminate the expense matrix. We find that, although the expense matrix data have been an important part of our policy and tariff review processes, the changing telecommunications marketplace and regulatory framework have led us to rely on this data less frequently in our deliberations. We recognize that there remains a need for certain information provided by the expense matrix; we find, however, that the information can be provided to the Commission on an as-needed basis. We expect companies to keep such data available and be prepared to provide it to the Commission should the Commission make such a request.

We require ILECs to maintain subsidiary record categories to provide the data necessary for the Commission, carriers, and competitors to calculate pole attachment rates. The Commission reviews complaints about pole attachment rates under sections 224 and 251 of the Communications Act. In the *Accounting Reductions Report and Order,* 64 FR 50002 (February 15, 1999), we required mid-sized ILECs to maintain subsidiary records to provide the pole attachment data, and we will continue to require the larger carriers to maintain such records as well. Several commenters in this proceeding oppose the subsidiary record requirement. We find that elimination of the expense matrix and future ARMIS changes make it uncertain that ARMIS alone will be sufficient to allow parties to evaluate the pole attachment rates. We conclude that it is necessary to maintain subsidiary records for data needed in pole attachment formulas. This will assure that the data are publicly available, uniformly maintained among the carriers, and maintained in a manner that can be audited. We therefore require ILECs to maintain subsidiary record categories to provide the pole attachment data currently in the expense matrix and ARMIS reports. We note that the Commission is considering issues regarding pole attachment formulas. When we release a Report and Order in that docket, we will specify the subsidiary record categories needed for the finalized pole attachment formulas.

2. Audits

We are adopting the less burdensome attest audit requirement, as an option, because we are convinced that attest audits, with the Commission's input on audit procedures, will adequately protect ratepayers. We are also persuaded to conclude as we do because the accounting profession has improved the standards governing attest audits since we first required them more than ten years ago. For example, in 1993, the AICPA promulgated detailed standards for attestation engagements concerning compliance with specific laws and regulations. We also note that our attest examination will involve much of the same audit testing as previously required, and that attest audit findings can lead to the same type of adjustment to carrier reports as did the previous audit requirement.

We are giving carriers the option of choosing an attest examination every two years, covering the prior two-year period, or a financial audit. Instead of an annual financial audit, the financial audit option will also be biennial, covering the prior two years. We are changing the annual financial audit requirement to a biennial requirement to allow carriers to move from one option to the other. The biennial requirement serves the policy underlying this proceeding appropriately. The requirement provides accounting reform without compromising the Commission's ability to meet its statutory and policymaking responsibilities. We disagree with the large ILECs who claim that the audit should be biennial yet cover only one year. Our experience reviewing CAM audits and performing our own audits leads us to conclude that each year requires audit work. Carrier accounting systems can and do change from year to year. Likewise, one-time material errors do occur. These problems would go undetected if we allowed carriers to skip an audit year. On the other hand, we do not believe we must require an attest audit each year. The auditor's work in the ''off year'' should provide assurance against cross-subsidization, while allowing large ILECs to realize reduced costs that come with obtaining one attestation instead of two.

3. Affiliate Transactions Rules

We adopt the proposal in our *NPRM* and establish a *de minimis* exception to our affiliate transactions rules for services. This *de minimis* exception is limited to affiliate transactions rules for services. All commenters addressing this issue are in support of the *de minimis* exception. We find that when the total annual value of transactions for a service is *de minimis,* the regulatory benefits of requiring carriers to make a good faith determination of the fair market value of a service may be outweighed by the administrative cost and effort of making such a determination. For non-*de minimis* services, the fully distributed cost/fair market value comparison remains an important safeguard against cross-subsidization. Thus, we do not eliminate the requirement for all services, nor do we extend it to asset transfers between carriers and their affiliates, as requested by several commenters. We note that the fully distributed cost/fair market value comparisons for assets is not as burdensome as those for services because the types of assets transferred are not typically so unique; further, we did not propose an asset exception in the *NPRM.*

In the *NPRM,* we proposed a threshold of $250,000. Several commenters suggest a higher threshold of $500,000. Commenters observe that only a limited number of services would fall under the $250,000 threshold for some large LECs and to provide meaningful relief the threshold should be $500,000. One commenter, on the other hand, suggests the threshold should be $1,000,000. We do not believe that the cost of fair market value/fully distributed cost comparisons is so high that a $1,000,000 exception is necessary. On the other hand, we believe that a $100,000 threshold, or a cap of 25 percent of the amount of services subject to the exception, may deprive carriers of many of the benefits of the exception. A cap is unnecessary because the independent auditors and the Commission will continue to monitor how carriers define services, thereby reducing the risk that the exception will be abused. We therefore adopt the $500,000 per service, per year *de minimis* exception to our § 32.27(c) good faith estimate requirement. Based on our experience enforcing the affiliate transactions rules, we conclude that the $500,000 threshold is reasonable. We find that below this threshold, the administrative cost and effort of making such a determination will outweigh the regulatory benefits of the good faith determination of fair market value of a service. Adopting this $500,000 *de minimis* exception will reduce the burden to carriers without lessening the effectiveness of our affiliate transactions rules.

Therefore, we eliminate the requirement that carriers make a good faith determination of fair market value for each service in cases where the total annual value of transactions for that service is less than $500,000. In such cases, the service should be recorded at fully distributed cost, and carriers should continue to report such transactions in their CAMs and ARMIS reports.

In the NPRM, we sought comment on whether affiliate transactions services conducted pursuant to sections 260, and 271 through 276 of the Communications Act should be included in the services eligible for the *de minimis* exception. We agree with the commenters that the *de minimis* exception should apply to all affiliate transactions when a carrier must compare fully distributed cost and fair market value of services. We note that in our first action on affiliate transactions after the Telecommunications Act of 1996 we applied our valuation rules equally to transactions under these sections. This *de minimis* exception applies only to affiliate transactions in which a carrier must compare fully distributed cost and fair market value pursuant to § 32.27(c) of our rules, and thus it does not apply to transactions under sections 271 and 272, which do not require such a comparison.

4. Elimination of 15-Day Pre-Filing for Cost Pool Changes

Section 64.903 of the Commission's rules requires carriers to update their CAMs at least annually except that changes to the cost apportionment table and time-reporting procedures must be filed at least 15 days before the carrier plans to implement such changes. Once a CAM change has been filed, the Chief of the Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective. BellSouth claims that the 15-day filing period requires it to disclose sensitive competitive service information. In the *NPRM,* we proposed eliminating the 15-day pre-filing requirement.

We adopt our proposal, which is supported by most of the commenters, and eliminate the 15-day pre-filing requirement for cost apportionment table and time reporting procedure changes. Carriers will no longer have to disclose competitively sensitive information before the CAM changes are implemented. We disagree with the suggestion that we eliminate the contemporaneous filing requirement and allow changes to be filed annually. It is important to review CAM changes upon receipt and stay them if necessary. That authority and oversight over CAM changes remains a safeguard against modifications such as cost pool changes that may hurt ratepayers. The potential harm to ratepayers is that a LEC could shift costs from nonregulated services to regulated services, resulting in subsidization of nonregulated services with revenues earned from the provision of regulated services. We are not persuaded that the 15-day pre-filing rule must be retained in order to prevent such improper cost shifting. We review proposed CAM changes immediately and that authority and oversight remains an important safeguard against any improper cost shifting.

5. Revision to Section 32.13, Accounts—General

Section 32.13(a)(3) of the Commission's rules allows carriers to establish temporary or experimental accounts, provided they notify the Commission of the nature and purpose of the accounts within 30 days of their establishment. Carriers use these accounts as clearing accounts that are closed each financial period, and do not alter the part 32 accounting structure. In the *NPRM,* we proposed eliminating the 30-day notice requirement of § 32.13(a)(3) because other accounting safeguards, such as ARMIS reporting, audit reviews, and our ability to obtain additional information as necessary are sufficient for our regulatory oversight.

We adopt our proposal, supported by most of the commenters, and eliminate the 30-day notification requirement in § 32.13(a)(3). As we noted in the *NPRM,* sufficient accounting safeguards exist to detect any improper activity resulting from experimental or temporary accounts. Our audits and the CAM engagements of the carriers' independent auditors will protect regulated ratepayers from absorbing costs of the carrier's nonregulated activities. At the same time, this action relieves carriers of a notification requirement.

6. Revision to Section 32.25, Unusual Items and Contingent Liabilities

Section 32.25 of the Commission's rules requires carriers to submit journal entries detailing extraordinary items, contingent liabilities, and material prior period adjustments to the Commission for approval before recording them in their books of account. In the *NPRM,* we proposed eliminating this requirement due to other safeguards, such as review of ARMIS filings, reviews by independent auditors, our audits, and our ability to obtain additional information on these accounting entries as we need it.

We adopt our proposal, which most of the commenters unconditionally support as well. Therefore, we eliminate the requirement that carriers submit extraordinary items, material prior period adjustments, and contingent liabilities for our review prior to recording them pursuant to § 32.25. Sufficient accounting safeguards exist to detect ratepayer harm resulting from these accounting entries. Our audits, ARMIS filings, and the CAM engagements of the carriers' independent auditors will assure us that carriers will not use these accounts to harm ratepayers. At the same time, this action relieves carriers of a notification requirement.

7. Revision to Section 32.2002, Property Held for Future Telecommunications Use

Section 32.2002 of the Commission's rules requires that carriers record to Account 2002, Property held for future telecommunications use, the original cost of property held for no longer than two years under a definite plan for use in telecommunications service. If the property is not put into service within two years, its cost must be transferred to Account 2006, Nonoperating plant. Carriers may keep the cost in Account 2002 only if they request and receive approval from the Commission based on a public interest showing. BellSouth states that this reclassification is burdensome and that the cost of the property could remain recorded in Account 2002, but be removed from the ratebase in a less burdensome manner. In the *NPRM*, we proposed that carriers may keep the costs in Account 2002 but they must exclude the costs, and the associated depreciation reserve, from the ratebase. The depreciation reserve associated with these costs should also be excluded from ratemaking considerations. The amounts removed from the ratebase would be reported in the ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (1) Other Adjustments.

We adopt the proposal in the *NPRM* and eliminate the requirement that carriers reclassify property from Account 2002 to Account 2006 if it is not put into service within two years. Under this new method, carriers must exclude the costs and associated accumulated depreciation from the ratebase and ratemaking considerations and report these amounts in ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (1) Other Adjustments. Reporting the amounts remaining in Account 2002 in ARMIS 43–03 is essential for accounting safeguards. Carriers' methodologies in producing the ARMIS 43–03 report form the basis of their independent auditors' review and will also be the basis for any dollar adjustments. Additionally, reporting the amounts in ARMIS allows us to review the data. We conclude that reporting the amounts remaining in Account 2002 in ARMIS 43–03 is less burdensome than reclassifying the costs from Account 2002 to Account 2006.

8. Revision to Section 32.2003, Telecommunications Plant Under Construction

Section 32.2003 of the Commission's rules requires that carriers record in Account 2003, Telecommunications plant under construction, the original cost of construction projects including all related direct and indirect costs as provided under § 32.2000(c). If the construction project is suspended for six months or more, the cost must be reclassified to Account 2006, Nonoperating plant. If the project is abandoned, the cost must be charged to Account 7370, Special charges. BellSouth states that this reclassification is burdensome and that the property could remain recorded in Account 2003 and be excluded from the ratebase in a less burdensome manner. In the *NPRM*, we proposed that carriers be permitted to keep the costs in Account 2003, but remove the cost of suspended projects from the ratebase after six months. Carriers would be required to discontinue capitalization of allowance for funds used during construction under § 32.2000(c)(2)(x) until construction is resumed. Carriers would report these amounts in ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (1) Other Adjustments. Carriers would, however, continue to charge Account 7370 if the project were abandoned.

We adopt our proposal and eliminate the requirement that carriers reclassify property from Account 2003 to Account 2006 if the construction project is suspended for six months or more. Most of the commenters support this proposal. Under this new method, carriers must exclude the costs from the ratebase and ratemaking considerations. Carriers must also report these amounts in ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (1) Other Adjustments. We believe that reporting the construction costs in ARMIS are essential for several reasons related to accounting safeguards. Carriers' methodologies in producing the ARMIS 43–03 report form the basis of their independent auditors' attestation and will be the basis for any related dollar adjustments. Additionally, reporting the amounts in ARMIS allows us to review them as necessary.

B. ARMIS Reporting Requirements

1. Reductions to ARMIS 43–02 USOA Report

Most commenters generally agree with the changes we proposed to the ARMIS 43–02 Report. Some commenters, however, advocate changes to ARMIS reporting requirements beyond those set forth in the *NPRM*. We agree that further review of the ARMIS reporting requirements is warranted and further streamlining measures must be considered. In this Phase, however, we believe the more expeditious action is to eliminate and simplify requirements that can be implemented without delay, thereby minimizing the burdens on the industry immediately. As we stated in the *NPRM*, in Phase 2 we will examine more structural and long-term changes to our reporting requirements that will be appropriate as local exchange markets become competitive, and will assess what interim measures should be made as various transitional competitive milestones are reached. We note that ARMIS changes proposed by commenters that are not considered in this Phase will be fully considered in Phase 2.

2. ARMIS 43–02 USOA Report: Table C Reductions

We adopt our proposal in the *NPRM* to consolidate all of the basic ownership information from Tables C–1, C–2, C–3 and C–4 into one table. In reviewing our experience with the current reporting system, we find that the information collected in these four tables can more efficiently be provided in one table. As designed, the current system requires carriers to maintain four separate tables with a combined total of 8 columns and 27 row sections of information about its ownership and corporate structure, including information about state laws, partnerships, and various degrees of control over the organization. We can substantially simplify the current requirements and eliminate all but the basic kinds of ownership information. We find that an ownership profile consisting of the carrier's name, operating states, directors, and executive officers will be sufficient to meet our oversight responsibilities and permit us to make informed regulatory decisions. To accomplish this, we revise Table C–3 to include the carrier's name and states of operation and eliminate reporting of Tables C–1, C–2, and C–4.

We do not agree with the argument advanced by several commenters that these tables should be eliminated in their entirety because the information is available in SEC Form 10–K filings. Our review shows that in many cases, certain information collected in these tables is not reported in the carrier's SEC Form 10–K. For instance, the SEC Form 10–K provides that information about a carrier's directors and executive officers is optional. Our review found that in virtually every case, carriers choose the option not to report this information in their SEC Form 10–K. Our oversight responsibility requires that, at a minimum, we have access to the most basic information about the carrier. We conclude that our decision to require the carrier's name, operating states, directors, and executive officers is warranted. Collection of this data in the consolidated table will reduce the reporting burden on carriers.

Generally, Table C–5 requires the carrier to report on important changes to 12 activities: (1) Extensions of Systems; (2) Substantial Portions or All Property Sold; (3) Map Defining Territory; (4) Companies Coming Under the Direct Control of the Carrier; (5) Changes in the Direct Control of a Company; (6) Changes Affecting the Direct Control of a Company; (7) Companies Coming Under the Indirect Control of the Carrier; (8) Changes in the Indirect Control of a Company; (9) Changes Affecting the Indirect Control of a Company; (10) Important Contracts or Agreements; (11) Changes in Accounting Standards; and (12) Important Changes in Service and Rate Schedules.

In reviewing our experience with Table C–5, we conclude that the burdens imposed on the carriers are disproportionate to the benefits provided, and that elimination of a substantial portion of information collected in Table C–5 is warranted. We agree with commenters that certain information otherwise available in the carrier's SEC Form 10–K can be eliminated from Table C–5. We find that the reporting requirements concerning direct and indirect control of the carrier (items 4 through 9 in paragraph 39) can be eliminated without adverse consequences because this information is routinely reported in the carriers' SEC Form 10–K. In addition, information concerning changes in accounting standards (item 11 in paragraph 39) can be obtained from the carriers' SEC Form 10–K. Therefore, we will also eliminate this reporting requirement from Table C–5. Eliminating the reporting of these requirements will afford carrier's considerable relief from reiteration of information contained in their SEC filings. We will, however, require that carriers submit a copy of their SEC Form 10–K annual report to the Commission.

We also note that extension of system and map defining territory are not regularly reported by the ILECs due to the infrequent nature of these activities. We find that information related to these two items as reported in Table C–5 has not contributed to the Commission's overall formulation of policy and that further reporting on these matters is unwarranted. We

conclude that lack of information on these items in Table C–5 will not have a detrimental effect on our regulatory oversight responsibilities. Thus, we further simplify the reporting requirements of Table C–5 by eliminating these reporting requirements.

We agree with Ad Hoc that certain activities reported in Table C–5 should not be eliminated at this time. Information concerning substantial portions or all property sold, important contracts or agreements entered into, and important changes in service and rate schedules (items 2, 10, and 12 in paragraph 39), is not reported in carrier's SEC Form 10–K or its cost allocation manuals and is not available in other publicly available data. Information concerning these activities provides us with important information about the carriers' operations that is relevant to our deliberations on numerous policy matters. Thus, we will retain the requirement to report these activities in Table C–5.

The *NPRM* sought comment on whether we should adopt a threshold for reporting items in Table C–5, and if so, what would be an appropriate level. Commenters proposed establishing a threshold level of reporting that included specific dollar amounts ranging from $250,000 to $1 million or using a percentage of total operating revenues ranging from 1 percent to 5 percent. We agree with the parties that a threshold level is appropriate for reporting amounts for substantial portions or all property sold and for reporting important changes in service and rate schedules. Based on our experience, we find that a threshold level of $500,000 is appropriate for both these items. This level will provide relief to carriers in reporting and will continue to provide us with material and sufficient data. We do not agree, however, that a threshold level is appropriate for reporting important contracts or agreements entered into. This item generally encompasses contracts for interconnection and resale agreements that are not typically associated with specific total dollar amounts, but rather have price terms on a per unit or usage basis. We find that our current requirements, which do not require reporting of specific dollar amounts, are not overly burdensome and, in fact, establishing a threshold level may have the result of imposing additional burdens on carriers. Thus, we will not establish a threshold level for important contracts or agreements entered into.

3. ARMIS 43–02 USOA Report: Table B Reductions

We adopt our proposal, which is supported by most commenters, to eliminate seven tables from the Table B Series. Specifically, we eliminate the requirement to report on a routine basis: Tables B–8, Capital Leases; B–9, Deferred Charges; B–11, Long-Term Debt; B–12, Net Deferred Income Taxes; B–13, Other Deferred Credits; B–14, Capital Stock; and B–15, Capital Stock and Funded Debt Reacquired or Retired During the Year. These seven tables were intended to provide a more detailed explanation of specific accounts reported in Table B–1. A review of our experience reveals that, while the data derived from these seven tables have contributed to our policy analysis and rulemaking function, the level of detail required by these tables is no longer as critical to our deliberations. To the extent we may require such detail in the future, we can obtain such information through specific data requests to the carrier on an as needed basis. Thus, we conclude we can substantially reduce the Table B reporting requirements by eliminating the separate reporting requirements of these seven items.

GSA argues that we should retain our current reporting requirements for these seven items because the information they contain may not readily be available through other sources, such as routine SEC Reports. We recognize that that information and data reported in the carriers' SEC Form 10–K are highly aggregated and include both regulated telephone and nonregulated business information. As SBC points out, however, the footnotes in the SEC Form 10–K will generally provide information on details such as long-term debt and deferred taxes, which correspond to items reported in Tables B–11 and B–12. Further, to the extent that we require information that is not available in the carrier's SEC Form 10–K, or through other reliable public sources, we believe we can maintain our oversight of these activities through specific data requests on an as needed basis. Thus, although we relieve companies from routinely reporting this information in Table B, companies must keep such data available and be prepared to provide it promptly to the Commission should the Commission make such a request. In such cases, we expect carriers to provide requested information to the Commission in a timely manner and on a non-proprietary basis. We do not agree with the argument that data formerly reported in these ARMIS tables and now requested by the Commission on an as-needed basis should be treated as non-public. The purpose of this proceeding is to reduce the ARMIS reporting requirements while retaining sufficient information needed for the Commission and state commissions to meet their responsibilities. Therefore, all information requested by the Commission that would otherwise be reported in the ARMIS tables shall be publicly available unless the carrier makes a sufficient showing as to why the information should be treated as proprietary.

In addition to the seven tables at issue here, some parties further recommend that we eliminate all Table B reporting requirements, arguing that essentially all of the information is publicly available in carriers' SEC Form 10–K or other SEC filings, and is duplicative of other ARMIS Reports. Commenters also contend that information contained in these reports is irrelevant to regulation of price cap carriers. At this time we do not agree that it is appropriate to eliminate all Table B reporting requirements. The Commission continues to require accounting and financial data about these carriers to make informed regulatory judgments on numerous policy and ratemaking issues. Furthermore, under the current regulatory price cap scheme, carriers have the ability to seek full recovery of regulated costs through low-end adjustments, as well as taking claims. Thus, our continued monitoring of the reasonableness of these costs is necessary. The steps we take in this Order substantially streamline the current requirements and will afford carriers immediate regulatory relief of ARMIS reporting requirements. As we stated in the *NPRM*, we will undertake an exhaustive and thorough review of our ARMIS reporting requirements in Phase 2.

4. ARMIS 43–02 USOA Report: Table I Reductions

We adopt the proposal in the *NPRM*, which is supported by most commenters, to eliminate Tables I–3, I–4, and I–5. Our experience in collecting detailed data pertaining to the carrier's pension costs and taxes reveals that routine collection of such a level of detail is no longer necessary for us to make informed regulatory judgments in this area. We can obtain necessary information for our regulatory purposes through specific data requests to the carriers on an as-needed basis. Similar to our determination concerning elimination of the seven B tables above, we expect carriers to keep such data available and be prepared to provide such data to the Commission should the

Commission make such a request. In such cases, we expect carriers to provide requested information to the Commission in a timely manner and on a non-proprietary basis.

We affirm our conclusion in the *NPRM* that information collected in Table I–6 continues to be essential to our oversight responsibilities. This table reports on items that are below-the-line amounts, *i.e.*, are not allowable expenses to be charged against regulated revenues. Special Charges reported in Table I–6 include lobbying expenses, membership fees and dues, abandoned construction projects amounting to $100,000 or more, telecommunications plant acquisition adjustments, penalties and fines amounting to $100,000 or more, and charitable, social, or other community welfare expenses. Some commenters argue that all reporting of Table I–6 should be eliminated. We disagree. Price cap carriers may fully recover reasonable costs associated with regulated activities through the low-end adjustment mechanism or through a takings claim, therefore it is important that below-the-line expenditures are not included in regulated activities. The items reported in Table I–6, especially if material, could have significant impact on the carrier's regulated activities if not properly recorded. Routine monitoring of these expenses provides assurance that these amounts are properly recorded on the carrier's books.

We can significantly reduce the burdens associated with Table I–6 without seriously hampering our ability to monitor these expenses by raising the current reporting threshold level for abandoned construction projects and penalties and fines. In the *NPRM*, we sought comment on whether the reporting threshold for these items should be raised to a higher amount and, if so, what amount to establish as the reporting threshold. Commenters provided a range of options for raising the threshold level for these items, from $250,000 to $1,000,000. Based on our review of the data, we find it would be appropriate to increase the current threshold levels from $100,000 to $500,000 for both abandoned construction projects and penalties and fines. Specifically, we reviewed 1998 data reported in Table I–6 for abandoned construction projects and penalties and fines and found that the Bell Operating Companies and GTE reported 22 individual items with a total amount of approximately $16 million. We found that expenditures of $500,000 or more constituted 85 percent of the total amount reported for the two activities. Thus, we conclude that $500,000 or more is a reasonable level of reporting for both these activities. Any threshold lower than $500,000 would not significantly reduce the reporting burden for the largest carriers and any threshold higher than $500,000 may not provide us sufficient information to perform our monitoring function.

We also affirm our determination to retain reporting for Table I–7. We disagree with commenters that reporting of these amounts should be eliminated. The items reported in Table I–7 concern expenditures that may not be appropriate or reasonable to charge against regulated operations. Thus, our oversight responsibilities require that we maintain some degree of reporting to ensure that these expenditures are reasonable and recorded properly.

The *NPRM* requested comment on whether the current threshold levels for Table I–7 reporting should be revised. Under the current requirements, there are three reporting threshold levels depending on the type of payment. Carriers must report: (1) Amounts exceeding $250,000 for Advertising & Information Services, Clerical & Office Services, Computer & Data Processing Services, Personnel Services, Printing & Design Services, and Security Services; (2) amounts exceeding $25,000 for Audit & Accounting, Consulting & Research Services, Financial, and Legal; and (3) amounts exceeding $10,000 for Membership Fees & Dues. Table I–7 also requires carriers to report all amounts for Academia.

We find that an increase in the current threshold levels for reporting items on Table I–7 is justified. By raising the current threshold levels, we can significantly reduce the reporting burden for Table I–7 while retaining sufficient information to meet our oversight responsibilities. Our review of proposals submitted by the commenters finds that the threshold levels advanced by GSA and Ad Hoc would have a very small impact on the amounts provided under current reporting requirements and would provide little relief to carriers. We also find that by changing the payment types corresponding to the current threshold levels, and thus, proposing a fourth threshold level for some items, the proposals advanced by USTA and GTE result in a more complex reporting scheme than currently exists. Based on our analysis, we find that it is appropriate to raise the threshold levels for reporting items in Table I–7 as follows: (1) Amounts exceeding $1,000,000 for Advertising & Information Services, Clerical & Office Services, Computer & Data Processing Services, Personnel Services, Printing & Design Services, and Security Services; (2) amounts exceeding $500,000 for Audit & Accounting, Consulting & Research Services, Financial, and Legal; and (3) amounts exceeding $50,000 for Membership Fees & Dues. We find that these new thresholds will capture material information for our oversight needs while at the same time substantially reduce the reporting burden for carriers.

We also find that we can eliminate the reporting of amounts reported for Academia. Based on our analysis, we find that the existing requirement to report all amounts for Academia is no longer justified. As designed, this reporting requirement was established to provide the Commission with information relevant to expertise obtained by carriers for regulatory purposes. Reviewing our experience with the present reporting requirement for Academia, we find that it imposes substantial burdens on the carriers while providing little value to our oversight of carrier's activities. Given the minimum level of benefit this data provides we find that we can eliminate the collection of this information without compromising our oversight responsibilities.

III. Conclusion

In this *Report and Order*, we eliminate the expense matrix filing requirement; provide large ILECs the option to obtain a biennial attestation engagement to satisfy their CAM audit obligation; establish a $500,000 *de minimis* exception to our affiliate transactions fair market value estimate requirement; eliminate the 15-day pre-filing requirement for cost pool and time reporting procedures changes; eliminate the notification requirement for temporary or experimental accounts; eliminate the notification requirement for extraordinary items, contingent liabilities, and material prior period adjustments; eliminate the reclassification requirements for property in Account 2002; and eliminate the reclassification requirements for property in Account 2003. We substantially streamline the ARMIS 43–02 USOA Report and significantly reduce the reporting requirements for carriers. Specifically, we revise Table C–3 to include carrier's name, address, and operating states and eliminate Tables C–1, C–2, and C–4; eliminate nine of twelve reporting items in Table C–5 and establish reporting threshold levels for two items; eliminate seven of fifteen reporting items in Table B; eliminate three of seven reporting items in Table I; establish higher threshold levels for items reported in

Tables I–6 and I–7 and eliminate the reporting requirements for Academia.

IV. Procedural Issues

A. Regulatory Flexibility Analysis

Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' In the *NPRM*, the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission stated that the proposed rules would reduce certain recordkeeping and CAM audit requirements; that the changes should be easy and inexpensive for the ILECs to implement; and that the rule changes would not require costly or burdensome procedures. No comments were received concerning this certification. The Commission now reaffirms this certification with respect to the rules adopted in this Report and Order. The Commission anticipates that the rule changes adopted here will reduce regulatory and procedural burdens on ILECs. The rule modifications do not impose any additional compliance burden on persons dealing with the Commission. Accordingly, the Commission certifies, pursuant to 5 U.S.C. 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA.

Report to Congress

The Consumer Information Bureau, Reference Information Center, shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA. The certification will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

Final Paperwork Reduction Act Analysis

The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to impose new or modified recordkeeping requirements or burdens on the public. The rule amendments set forth in this Report and Order will become effective 6 months after their publication in the **Federal Register**. The rules in this document contain information collections, which have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

V. Ordering Clauses

Pursuant to Sections 1, 4, 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, and 218–220, §§ 32 and 64 of the Commission's rules, 47 CFR 32 and 64, are amended.

The rule amendments set forth in this Report and Order will become effective 6 months after their publication in the **Federal Register**. The rules in this document contain information collections which have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

47 CFR Part 64

Communications common carriers, Federal Communications Commission, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules Changes

Part 32 of Title 47 of the CFR is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 220 as amended, unless otherwise noted.

2. In § 32.13 paragraph (a)(3) is revised to read as follows:

§ 32.13 Accounts—general.

(a) * * *

(3) A company may establish temporary or experimental accounts without prior notice to the Commission.

3. Section 32.25 is revised to read as follows:

§ 32.25 Unusual items and contingent liabilities.

Extraordinary items, prior period adjustments, and contingent liabilities may be recorded in the company's books of account without prior Commission approval.

4. In § 32.27 paragraph (c) is revised to read as follows:

§ 32.27 Transactions with affiliates.

* * * * *

(c) Services provided between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a carrier and its affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other services provided by a carrier to its affiliate, the services shall be recorded at the higher of fair market value and fully distributed cost. For all other services received by a carrier from its affiliate, the service shall be recorded at the lower of fair market value and fully distributed cost. For purposes of this section, carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000. When a carrier reaches or exceeds the $500,000 threshold for a particular service for the first time, the carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a carrier from its affiliate(s) that exist solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost.

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5. Section 32.2002 is revised to read as follows:

§ 32.2002 Property held for future telecommunications use.

(a) This account shall include the original cost of property owned and held for no longer than two years under

a definite plan for use in telecommunications service. If at the end of two years the property is not in service, the original cost of the property may remain in this account so long as the carrier excludes the original cost and associated depreciation from its ratebase and ratemaking considerations and report those amounts in reports filed with the Commission pursuant to 43.21(e)(1) and 43.21(e)(2) of this chapter.

(b) Subsidiary records shall be maintained to show the character of the amounts carried in this account.

6. In § 32.2003(c) the paragraph is revised to read as follows:

§ 32.2003 Telecommunications plant under construction.

* * * * *

(c) If a construction project has been suspended for six months or more, the cost of the project included in this account may remain in this account so long as the carrier excludes the original cost and associated depreciation from its ratebase and ratemaking considerations and reports those amounts in reports filed with the Commission pursuant to 43.21(e)(1) and 43.21(e)(2) of this chapter. If a project is abandoned, the cost included in this account shall be charged to Account 7370, Special Charges.

§ 32.5999 [Amended]

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7. In § 32.5999, paragraph (f) is removed, and paragraphs (g) and (h) are redesignated as paragraphs (f) and (g).

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

8. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

9. In § 64.903 paragraph (b) is revised to read as follows:

§ 64.903 Cost allocation manuals.

* * * * *

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at the time of implementation. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Chief, Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

* * * * *

10. In § 64.904 paragraph (a) is revised to read as follows:

§ 64.904 Independent audits.

(a) With the exception of mid-sized local exchange carriers, each local exchange carrier required to file a cost allocation manual, by virtue of having annual operating revenues that equal or exceed the indexed revenue threshold for a given year or by order by the Commission, shall elect to either (1) have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or (2) have a financial audit performed by an independent auditor every two years, covering the prior two year period. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual. The attest engagement shall be an examination engagement and shall provide a written communication that expresses an opinion that the systems, processes, and procedures applied by the carrier to generate the results reported pursuant to 43.21(e)(2) of this chapter comply with the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, 64.901, and 64.903 in force as of the date of the auditor's report. At least 30 days prior to beginning the attestation engagement, the independent auditors shall provide the Commission with the audit program. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Common Carrier Bureau. The biennial financial audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, 64.901, and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

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[FR Doc. 00–7598 Filed 3–27–00; 8:45 am]
BILLING CODE 6701–12–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–321; MM Docket No. 98–55; RM–9255, RM–9327

Radio Broadcasting Services; Pleasanton, Bandera, Hondo, and Schertz, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Reding Broadcasting Company, substitutes Channel 252A for Channel 253C1 at Pleasanton, TX, reallots Channel 253C1 from Pleasanton to to Schertz, TX as the community's first local aural service, and modifies its license for Station KBUC(FM) to specify the higher class channel and new community of license. See 63 FR 20563 (1998). To accomplish these changes, the Commission also substitutes Channel 253A for Channel 290A at Hondo, TX with a transmitter site change, and Channel 252A for Channel 276A at Bandera, TX, at the licensed cite. Counterproposals filed by Comal Broadcasting Company and North American Broadcasting Company are dismissed. The coordinates for Channel 253C1 at Schertz are 29–31–25 and 98–43–25. The coordinates for Channel 276A at Bandera are 29–51–22 and 99–05–25. The coordinates for Channel 290A at Hondo are 29–21–00 and 99–15–00. These communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border. Therefore, concurrence by the Mexican Government for these allotments has been received.

DATES: Effective April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–55, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Schertz, Channel 253C1, removing Pleasanton, Channel 252A, removing Channel 253A at Hondo, and adding Channel 290A at Hondo, and removing Channel 252A at Bandera, and adding Channel 276A at Bandera.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7600 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–524; MM Docket 98–135; RM–9300, 9383]

Radio Broadcasting Services; Lufkin and Corrigan, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The document grants the Petition for Reconsideration filed by Corrigan Broadcasting Company of our *Report and Order*, 64 FR 65712 (November 23, 1999) which allotted Channel 232A to Corrigan, Texas and Channel 261A to Lufkin, Texas. In light of the Commission's action herein, Channel 261A is substituted for Channel 232A at Corrigan and the Commission's action allotting Channel 261A to Lufkin is reversed. The coordinates for Channel 261A at Corrigan are North Latitude 30–59–48 and West Longitude 94–49–48. With this action, this proceeding is terminated.

DATES: Effective April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 98–135, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business in the Commission's Reference Information Center (Room CY–A257) at its headquarters, 445 12th Street, S.W. Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Texas is amended by removing Channel 232A from Corrigan and adding Channel 261A at Corrigan, and removing Channel 261A from Lufkin.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7599 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991008273–0070–02; I.D. 062399B]

RIN 0648–AK89

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 9 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 9). For Gulf migratory group king mackerel, this rule establishes a moratorium on issuance of gillnet endorsements that includes eligibility criteria and restrictions on transferability of endorsements; restricts the area in which the gillnet fishery can operate; reallocates the eastern zone quota between the Florida east coast and Florida west coast subzones; and divides the Florida west coast subzone into northern and southern subzones with respective quotas. This rule also allows retention and sale of cut-off (damaged) king and Spanish mackerel that are greater than the minimum size limits and possessed within the trip limits. The intended effect of this rule is to protect king and Spanish mackerel from overfishing and to maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

DATES: This final rule is effective April 27, 2000.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter; telephone: 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On July 6, 1999, NMFS announced the availability of Amendment 9 and requested comments on the amendment (64 FR 36325). NMFS approved Amendment 9 on October 7, 1999, and published a proposed rule to implement the measures in Amendment 9 and requested comments (64 FR 60151, November 4, 1999). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

NMFS received twenty-one public comments, many with common statements. A summary of the comments and NMFS' responses follow.

Comment 1: Three commenters expressed general support for the actions to be implemented by this final rule, with minor comments or suggestions for additional measures that could be considered by the Council (see Comment 10). One of the commenters stated that the actions to establish separate sub-zones along Florida's west coast and to implement a moratorium on gill net endorsements were long overdue. Another commenter supported measures that would bring catch capacity in line with total allowable catch until an individual fishing quota or other capacity limiting management strategy could be implemented. By contrast, one commenter opposed all of the actions proposed in Amendment 9, concluding that the actions were unwarranted and unnecessary.

Response: NMFS believes that the actions in Amendment 9 will enhance the socioeconomic benefits of the commercial king mackerel fishery, protect the stock from overfishing, and reduce waste which will improve the accuracy of fishing mortality estimates. NMFS is implementing these actions through this final rule.

Comment 2: Three comments supported the establishment of a northern and southern subzone in the Florida west coast subzone, but three other commenters were opposed to the establishment of the subzones because they unfairly restricted access to the fishery resource. One of the latter commenters noted that the proposed boundaries of the northern and southern subzones would discriminate against central Florida Gulf coast fishermen. The commenter stated that the northern subzone quota will be caught by fishermen fishing off the Florida Panhandle during the summer, closing the fishery in the subzone before the fish migrated south to the central Florida area; central Florida fishermen then would be restricted to fish in the southern subzone (Collier and Monroe Counties), creating a hardship on the fishermen and their families.

Response: NMFS disagrees that the establishment of subzones and the reallocation of the Gulf group king mackerel Eastern Zone quota is unfair or discriminatory to any particular region or fishing sector. The allocations of the quota, as derived by the Councils, were based on the recent landing histories for each region. The Councils recommended an allocation to fishers in the northern zone that reflected their recent landings, while at the same time, protected the historical contribution and participation of the fishers in the south Florida area. NMFS agrees with the strategy employed to derive these re-allocations.

Comment 3: Eleven comments stated the proposed northern subzone quota of 175,500 lb (79,606 kg) was too small. Several of these commenters expressed dismay that the proposed quota was only 14 percent of the total 1,170,000–lb (530,703–kg) eastern zone quota. The commenters thought that the northern subzone would receive a 25 to 30 percent allocation of the eastern zone quota. Several commenters stated that the re-allocation unfairly provided most of the quota to the southern subzone, noting that fishermen in the southern subzone also have the ability to fish seasonally on Atlantic group king mackerel, thus providing even greater access to king mackerel resources. Several commenters suggested that NMFS increase the allocation proposed by the Council for the northern subzone by at least 100,000 lb (45,359 kg).

Response: The Councils recognized that northern Florida landings of king mackerel have increased significantly in recent years. During the 1980s, Monroe County (the Florida Keys) accounted for nearly 90 percent of the king mackerel landings on the west coast of Florida. During the 1990s, the contribution by the Florida Panhandle area increased to approximately 25 percent of the total hook-and-line landings. The selection of a dedicated 175,500 lb (79,606 kg) to the proposed northern subzone equates to 30 percent of the existing 585,000–lb (265,352–kg) hook-and-line allocation for the existing Florida west coast subzone, and nearly 25 percent of the total Florida west coast hook-and-line allocation as implemented in this rule. The allocation of the 175,500 lb (79,606 kg) was derived by dedicating 7.5 percent of the total eastern Gulf commercial quota of 2.34 million lb (1.06 million kg) to the northern subzone. The remaining 92.5 percent was then divided equally between the Florida east coast and Florida west coast (excluding the northern subzone). The Florida west coast quota for the proposed southern subzone was then divided equally between the hook-and-line and run-around gillnet fisheries. In providing this option, the Councils attempted to reflect the recent increases in the proportion of the landings attributable to the northern area, while maintaining support for the more traditional and historical fishery of southern Florida.

With the seasonal shift in the boundary dividing the Atlantic group from the Gulf group king mackerel stocks, beginning on April 1 of each year, southern Florida (Monroe and Collier County) fishermen do have access to the Atlantic group fish. However, this fishery is short-lived as the fish soon migrate north out of the south Florida area.

NMFS supports the Councils' rationale in deriving the allocations for each subzone within the Gulf group eastern zone king mackerel fishery. NMFS cannot increase the proposed allocation for the northern subzone, as suggested by the various commenters. NMFS may approve, partially approve, or disapprove actions submitted by the Councils; NMFS may not substitute actions in this rule for those submitted by the Councils.

Comment 4: Three commenters believed that the proposed reduction for the Florida east coast quota was unfair. Commenters noted that they had accepted lower trip limits for years so that the fishery could remain open year-round. With the reduction in their quota, the fishers are concerned that the fishery will be closed earlier resulting in hardship on Atlantic coast fishermen.

Response: The Florida east coast subzone was first established for the 1994–95 fishing year with a quota of 865,000 lb (392,357 kg) for this segment of the fishery. Beginning with the 1997–98 fishing year, the quota was increased to 1,170,000 lb (530,703 kg). The measures in Amendment 9 would reduce this quota to 1,082,250 lb

(490,900 kg). This segment of the fishery has been closed only once when the quota was reached during the 1998–99 fishing year. That closure was only two weeks prior to the March 31 end of the fishing year. Given that this fishery has only once met its quota, NMFS does not believe that the redistribution of quota allocations will affect overall landings and fishing season for this segment of the fishery.

Additionally, any future increases of total allowable catch for the Gulf group king mackerel stock, when that stock is no longer overfished, would be distributed among the various fishery sectors.

Comment 5: Two commenters believed that restricting gillnet endorsements to those fishers who were active in the fishery is unfair. One of the commenters also opposed the limited transferability of the endorsements. Both noted that fishers who may be inactive in a fishery still maintain their permits and endorsements in the event that their primary fisheries are closed, and it becomes necessary for them to fish in an alternative fishery. By contrast, two commenters supported the moratorium and limited transferability of gillnet endorsements, but questioned the continuing 50–percent allocation of the commercial quota for the proposed southern subzone gillnet segment of the fishery.

Response: The Councils chose to restrict the issuance of gillnet endorsements in the Gulf group king mackerel fishery to curtail expansion of that fishery, and NMFS agrees with this concept. The gillnet fishery has a long history of participating in the commercial king mackerel fishery. NMFS' records indicate that about 87 vessels hold active king mackerel permits with gillnet endorsements, but, since the 1994/1995 season, only 22 different vessels have participated in the fishery. Only about 17 of the 22 recently active gillnet endorsement holders would be able to retain their gillnet endorsements under Amendment 9. Two of the 22 vessels dropped out of the fishery prior to the 1995/1996 and 1996/1997 fishing seasons that will be used as the criterion for retention of the gillnet endorsement, and three vessels entered the fishery after these dates. Thus, the majority (17 of 22) of the current and active gillnet fishers will be eligible to remain in the fishery.

NMFS believes that limiting the number of participants in the gillnet fishery is imperative to prevent expansion and overcapitalization in the fishery and to reduce the probability of quota overruns by this prolific segment of the fishery. Limiting the issuance of gillnet endorsements to those vessels that can demonstrate active participation in the fishery and allowing transfer of those endorsements only to family members will allow continued participation by historical fishing families while the Councils consider whether additional or alternative options should be implemented to effectively manage the overfished Gulf group king mackerel fishery.

NMFS disagrees that the continued 50–percent allocation to the gillnet fishery in the proposed southern subzone of the Florida west coast subzone is inequitable. As noted, about 17 of the 22 recently active participants will be eligible to continue in this fishery, and this segment of the fishery historically has taken its allocation of the quota in a short timeframe. Should the number of eligible participants in the gillnet fishery decline in the future, the Council can reconsider this allocation.

Comment 6: Two comments supported the sale of cut-off fish.

Response: One of the mandates in the 1996 Sustainable Fisheries Act is to reduce bycatch and waste in fisheries. NMFS agrees that allowing the possession and sale of cut-off fish that otherwise would meet the minimum size limit and be possessed within the legal trip limit will reduce waste in this fishery and provide a more accurate assessment of fishing mortality by reducing unreported regulatory discards.

Comment 7: Three comments addressed a proposed action described in Amendment 9 that was rejected by the Councils and not included in the proposed and final rule. This action would have prohibited the sale of recreationally caught fish. Additionally, a minority report from one Gulf Council member expressed concern that this measure was not approved by the South Atlantic Council for consideration by the Secretary of Commerce. Commenters suggested that recreational sale, if allowed to continue, should be suspended when the commercial fishery closes.

Response: NMFS supports the concept of prohibiting the sale of recreationally caught fish. Allowing such sales leads to double-counting of fish which impacts the accuracy of the estimates of fishing mortality. The no-sale provision described in the amendment was not supported collectively by the Councils administering this joint FMP. Thus, the Councils could not forward the no-sale provision for inclusion in the proposed rule.

Comment 8: Two commenters questioned the fairness of further restricting the commercial fishery by placing a moratorium on gillnet endorsements, while the recreational fishery is not required to have a permit and does not have to demonstrate any qualifications to maintain an active status in the fishery.

Response: There are currently no licensing requirements for private individuals to fish recreationally in the exclusive economic zone (EEZ). However, a charter vessel/headboat permit for coastal migratory fish must be issued and on board a vessel that is operating as a charter vessel or headboat to fish for or possess coastal migratory pelagic fish in or from the EEZ. Additionally, the owner or operator of a vessel for which a charter vessel/headboat permit for coastal migratory pelagic fish has been issued, or whose vessel fishes for or lands such coastal migratory pelagic fish in or from state waters adjoining the Gulf or South Atlantic EEZ, and who is selected by NMFS to report must maintain a fishing record for each trip or a portion of such trips, as specified by NMFS, on forms provided by NMFS and must submit such records on a regular basis. If selected, charter vessels must submit completed fishing records to NMFS weekly, and headboats must submit completed fishing records monthly. The Councils are currently considering a permit moratorium for the for-hire sector for coastal migratory pelagic fish, Gulf reef fish, and South Atlantic snapper-groupers to address the rapid expansion of the for-hire industry throughout the Southeast.

Comment 9: One commenter questioned why it was necessary to further restrict directed commercial harvest by limiting the number of commercial fishermen in the coastal migratory pelagic fishery through a permit moratorium, when the Councils were not further restricting shrimping effort which has an impact on coastal migratory stocks through bycatch mortality.

Response: The Councils have addressed shrimp trawl bycatch and its impact on coastal migratory pelagic fishes. Bycatch reduction devices (BRDs) are required in all EEZ waters shoreward of the 100–fathom (183–m) depth contour west of Cape San Blas, Florida, in the Gulf of Mexico, and in all EEZ waters of the South Atlantic. BRDs are also required in all South Atlantic state waters, and the State of Florida requires the use of BRDs in shrimp trawls in state waters in the Gulf of Mexico. Additionally, the Gulf of Mexico Fishery Management Council is

considering options to extend BRD requirements into the eastern Gulf of Mexico, making the use of BRDs mandatory in all EEZ waters in the Gulf of Mexico.

Comment 10: Several commenters offered suggestions for additional actions that they believe would be beneficial to managing the coastal migratory pelagic fisheries but that were not included in Amendment 9. One comment suggested that NMFS allow for quota adjustments in subsequent years for any overruns that occur by a particular fishery segment. Two commenters suggested that a logbook or other reporting system should be required for recreational fishing vessels or operators who sell their catch to avoid the double-counting of recreationally caught fish that are later sold and counted against the commercial quota. One commenter further suggested that a fishing license system should be developed for the private recreational sector in the EEZ. One commenter suggested that 50 percent, not 25 percent, of the fisher's income should be derived from commercial fishing in order to be eligible for a commercial permit. Another commenter suggested that the criterion should be based on the landing history of mackerel and not just on income derived from fishing. One commenter stated that the stock assessment and proposed actions did not consider an 18.6-year lunar cycle, the North Atlantic oscillation, or the 11-year shift in sea water temperatures and the effects of these phenomena on coastal migratory pelagic fish stocks.

Response: NMFS agrees that numerous additional management options are available to the Councils to effectively manage the coastal migratory pelagic resources of the southeastern United States. However, as noted in Comment 3, NMFS cannot substitute measures for those proposed by the Councils in this rule. NMFS encourages the public to be actively involved in the Council process and provide suggestions to the Councils for their deliberations. Regarding the incorporation of environmental variables and their effects on fish stocks in stock assessments, although these phenomena may exist, there is currently no evidence suggesting that they have any effect on the biology, abundance, or distribution of mackerel.

Classification

The Administrator, Southeast Region, NMFS, determined on October 7, 1999, that Amendment 9 is necessary for the conservation and management of the FMP and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule includes collection-of-information requirements that are subject to the PRA and which has been approved under OMB control number 0648-0205. The estimated response times are 20 minutes for a king mackerel permit application and 5 minutes for a king mackerel gillnet endorsement. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 22, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraphs (a)(2)(ii) through (a)(2)(iv), the first sentence of paragraph (g), and paragraph (o) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(ii) *Gillnets for king mackerel in the southern Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone (see § 622.42(c)(1)(i)(A)(*3*)), a commercial vessel permit for king mackerel with a gillnet endorsement must have been issued to the vessel and must be on board. See paragraph (o) of this section regarding a moratorium on endorsements for the use of gillnets for king mackerel in the southern Florida west coast subzone and restrictions on transferability of king mackerel gillnet endorsements.

(iii) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application. See paragraph (q) of this section regarding a moratorium on commercial vessel permits for king mackerel, initial permits under the moratorium, transfers of permits during the moratorium, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

* * * * *

(g) *Transfer.* A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a

commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in § 622.17(c) for a commercial vessel permit for golden crab, or in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper. * * *

* * * * *

(o) *Moratorium on endorsements for the use of gillnets for king mackerel in the southern Florida west coast subzone.* (1) An initial king mackerel gillnet endorsement will be issued only if—

(i) The vessel owner was the owner of a vessel with a commercial mackerel permit with a gillnet endorsement on or before October 16, 1995; and

(ii) The vessel owner was the owner of a vessel that had gillnet landings of Gulf migratory group king mackerel in one of the two fishing years, July 1, 1995, through June 30, 1996, or July 1, 1996, through June 30, 1997. Such landings must have been documented by NMFS or by the Florida Department of Environmental Protection trip ticket system as of December 31, 1997. Only landings when a vessel had a valid commercial permit for king mackerel with a gillnet endorsement and only landings that were harvested, landed, and sold in compliance with state and Federal regulations may be used to establish eligibility.

(2) Paragraphs (o)(1)(i) and (o)(1)(ii) of this section notwithstanding, the owner of a vessel that received a commercial king mackerel permit through transfer, between March 4, 1998, and March 28, 2000, from a vessel that met the eligibility requirements in paragraphs (o)(1)(i) and (o)(1)(ii) also qualifies for an initial king mackerel gillnet endorsement.

(3) To obtain an initial king mackerel gillnet endorsement under the moratorium, an owner or operator of a vessel that does not have a king mackerel gillnet endorsement on March 28, 2000 must submit an application to the RA, postmarked or hand delivered not later than June 26, 2000. Except for applications for renewals of king mackerel gillnet endorsements, no applications for king mackerel gillnet endorsements will be accepted after June 26, 2000. Application forms are available from the RA.

(4) The RA will not issue an owner more initial king mackerel gillnet endorsements under the moratorium than the number of vessels with king mackerel gillnet endorsements that the owner owned simultaneously on or before October 16, 1995.

(5) An owner of a vessel with a king mackerel gillnet endorsement issued under this moratorium may transfer that endorsement upon a change of ownership of a permitted vessel with such endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such endorsement also may be transferred to another vessel owned by the same entity.

(6) A king mackerel gillnet endorsement that is not renewed or that is revoked will not be reissued. An endorsement is considered to be not renewed when an application for renewal is not received by the RA within 1 year after the expiration date of the permit that includes the endorsement.

* * * * *

3. In § 622.38, paragraph (g) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(g) Cut-off (damaged) king or Spanish mackerel that comply with the minimum size limits in § 622.37(c)(2) and (c)(3), respectively, and the trip limits in § 622.44(a) and (b), respectively, may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective trip limits. Such cut-off fish also may be sold. A maximum of five additional cut-off (damaged) king mackerel, not subject to the size limits or trip limits, may be possessed or offloaded ashore but may not be sold or purchased and are not counted against the trip limit.

* * * * *

4. In § 622.41, paragraphs (c)(1)(ii) and (c)(2)(iv) are revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(1) * * *

(ii) King mackerel, Gulf migratory group—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.42(c)(1)(i)(A)(*3*) for a description of the southern Florida west coast subzone.)

* * * * *

(2) * * *

(iv) *Exception for king mackerel in the Gulf EEZ.* The provisions of this paragraph (c)(2)(iv) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (c)(2)(iii) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(A) Such vessel may not use unauthorized gear in a directed fishery for king mackerel in the Gulf EEZ.

(B) If such a vessel has a drift gillnet or a long gillnet on board or a run-around gillnet in an area other than the southern Florida west coast subzone, no king mackerel may be possessed.

(C) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone, the possession of king mackerel taken incidentally is restricted only by the closure provisions of § 622.43(a)(3) and the trip limits specified in § 622.44(a). See also paragraph (c)(4) of this section regarding the purse seine incidental catch allowance of king mackerel.

* * * * *

5. In § 622.42, paragraphs (c)(1)(i)(A)(*1*) through (c)(1)(i)(A)(*3*) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) * * *

(*1*) *Florida east coast subzone*—1,082,250 lb (490,900 kg).

(*2*) *Florida west coast subzones*—(*i*) *Southern*—1,082,250 lb (490,900 kg), which is further divided into a quota of 541,125 lb (245,450 kg) for vessels fishing with hook-and-line and a quota of 541,125 lb (245,450 kg) for vessels fishing with run-around gillnets.

(*ii*) *Northern*—175,500 lb (79,606 kg).

(*3*) *Description of Florida subzones.* The Florida east coast subzone is that part of the eastern zone north of 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from

25°20.4' N. lat. to 26°19.8' N. lat., a line directly west from the Lee/Collier County, FL boundary (i.e., the area off Collier and Monroe Counties). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary (i.e., off Collier County). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 87°31'06'' W. long., which is a line directly south from the Alabama/Florida boundary.

* * * * *

6. In § 622.44, paragraphs (a)(2)(i) and (a)(2)(ii) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(i) *Eastern zone-Florida east coast subzone*. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 50 fish per day.

(ii) *Eastern zone-Florida west coast subzone*—(A) *Gillnet gear*. (*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the southern Florida west coast subzone's fishery for vessels fishing with run-around gillnets has been effected under § 622.43(a)—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(*2*) In the southern Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial permit for king mackerel with a gillnet endorsement.

(*ii*) King mackerel from the southern west coast subzone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*i*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(B) *Hook-and-line gear*. In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.4(a)(2)(iii), and operating under the hook-and-line gear quotas in § 622.42(c)(1)(i)(A)(*2*)(*i*) or (c)(1)(i)(A)(*2*)(*ii*):

(*1*) From July 1, each fishing year, until 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested, until a closure of the respective northern or southern subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

* * * * *

7. In § 622.45, paragraph (h) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(h) *Cut-off (damaged) king or Spanish mackerel*. A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits specified in § 622.37(c)(2) or (c)(3), respectively, or that is in excess of the trip limits specified in § 622.44(a) or (b), respectively.

[FR Doc. 00–7610 Filed 3–27–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991228354–0078–02; I.D. No. 111299C]

RIN 0648–AM49

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2000 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; specifications for 2000.

SUMMARY: NMFS issues final specifications for the 2000 fishing year for Atlantic mackerel, squid, and butterfish (MSB). This rule also allocates the domestic annual harvest for *Loligo* squid into three 4-month periods, and prohibits the use of any combination of mesh or liners that effectively decreases the mesh size below the minimum mesh size of 1⅞ in (48 mm). The intent of this rule is to comply with the regulations for MSB that require NMFS to publish specifications for each fishing year to conserve and manage the resource in compliance with the regulations, fishery management plan, and Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The quotas for *Loligo* and *Illex* squid, Atlantic mackerel, and butterfish are effective March 22, 2000, through December 31, 2000. Sections 648.21(e) and 648.22(a) are effective March 22, 2000. Section 648.23(c) is effective April 27, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial and Final Regulatory Flexibility Analyses (EA/RIR/IRFA), are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) require NMFS to publish annual specifications for initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP.

Proposed 2000 initial specifications were published on January 5, 2000 (65 FR 431). Public comments were requested through February 4, 2000. The final specifications are unchanged from those that were proposed. A complete discussion of the specifications appears in the preamble to the proposed rule and is not repeated here.

2000 Final Specifications

The following table contains the final specifications for the 2000 MSB fisheries as recommended by the Mid-

Atlantic Fishery Management Council (Council).

TABLE 1.—FINAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2000

[Metric Tons (mt)]

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	1 [1]	6,000
ABC	13,000	24,000	347,000	7,200
IOY	13,000	24,000	[2] 75,000	5,900
DAH	13,000	24,000	[3] 75,000	5,900
DAP	13,000	24,000	50,000	0
JVP	0	0	[4] 10,000	0
TALFF	0	0	0	0

[1] Not applicable.
[2] OY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 15,000 mt at discretion of the Regional Administrator.

Joint Ventures

This rule also specifies an Atlantic mackerel JVP of 10,000 mt for the 2000 fishery, with a possible increase of up to 5,000 mt for a total JVP of up to 15,000 mt later in the fishing year. If applications received for JVP account for more than 10,000 mt in a fishing year, NMFS may increase this allocation up to 15,000 mt by publishing a final rule in the **Federal Register**. NMFS believes that increasing the JVP in this way could provide additional opportunities for U.S. vessels to participate in joint venture (JV) fisheries. This action also specifies an Atlantic mackerel DAP of 50,000 mt and a DAH of 75,000 mt, which includes a 15,000-mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2000 Atlantic mackerel fishery as follows: (1) River herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel in JVs south of 37°30′ N. lat.; (2) The Regional Administrator (RA) must ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) If the Atlantic mackerel IOY is increased during the year, the total may not exceed 347,000 mt; and (4) Applications for a JV with a particular Nation's vessels for 2000 cannot be considered until the RA determines, based on an evaluation of performances, that the Nation's purchase obligations for previous years have been fulfilled.

Atlantic Squids

Loligo Gear Requirements

In addition to the quota specifications, this rule establishes additional gear requirements for the *Loligo* fishery as follows: ''The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.'' This is intended to help improve enforcement of the minimum mesh size requirements in the *Loligo* fishery while preserving the intended selective properties of the regulated mesh size (1⅞ in (48 mm)).

Distribution of Annual Loligo Quota by Three 4-Month Periods

This rule specifies a *Loligo* squid IOY of 13,000 mt, which is equal to ABC, and sub-divides the annual quota into three 4-month quota periods (Period I (Jan-Apr), Period II (May-Aug), and Period III (Sep-Dec)). The quota is allocated to each period based on the average proportion of landings that occurred in each 4-month period during the years 1994–1998. The directed *Loligo* fishery during Periods I and II will be closed when 90 percent of the amount allocated to the respective period is landed. The directed *Loligo* fishery will be closed in Period III when 95 percent of the annual quota has been taken. Once the directed squid fishery closes for a given period, a 2,500-lb (1,134-kg) *Loligo* trip limit would remain in place until the end of the respective period. The quota, allocated by 4-month periods, is shown in Table 2.

TABLE 2.—LOLIGO 4-MONTH PERIOD ALLOCATIONS

4-month period	Percent	Metric tons
I (Jan-Apr)	42	5,460
II (May-Aug)	18	2,340
III (Sep-Dec)	40	5,200
Total	100	13,000

Changes From the Proposed Rule

The Council recommended that any Period I or II quota underage be applied to the next trimester and that quota overages from Periods I and II be deducted from Period III. NMFS, in the preamble to the proposed rule, tried to clarify the Council's intent and proposed that any Period I and II quota underages be applied to Period III and any Period I and II quota overages be subtracted from Period III. However, that proposal would not provide the time needed to assess landings before the start of Period III. Each of the three trimester periods follow a monthly schedule, and not reporting weeks, therefore, the weekly reports using the data gathered by NMFS'' interactive voice response (IVR) will need to be adjusted to account for reporting weeks in which a period ends in the middle of that week. This adjustment is accomplished by either adding or subtracting landings from one period or the other. Final landings are determined by using all sources of data available to NMFS, including detailed trip level dealer and vessel reports, to validate the weekly IVR data. This process normally takes 60 to 90 days, depending on the availability of the data. By revising § 648.21(e)(2) to apply any Period I and II quota underages or overages to Period

III after November 15 of the same year, NMFS will have 75 days to validate the quota monitoring data and to make changes to the Period III commercial quota.

Editorial simplification and clarifications were made to § 648.23(c) to clarify further the mesh obstruction or constriction prohibition.

Comments and Responses

Eight comments were received on the proposed annual specifications and regulations. Summaries of the comments and responses on them are provided below.

Comment 1: In the proposed rule, DAH for Atlantic mackerel is composed of 15,000 mt for the recreational fishery, 50,000 mt for DAP, and 10,000 mt for JVP. A commenter proposed instead to specify 65,000 mt for DAH (15,000 mt for the recreational fishery), 35,000 mt for DAP, and 15,000 mt for JVP. The commenter noted that processors in past years have not attained the DAP levels recommended by the Council. The commenter also proposed allocation of 45,000 mt of TALFF to provide directed fishing as an incentive to foreign vessels considering JVs.

Response 1: These proposals, which could negatively affect U.S. processing and exports by infringing on markets currently engaged in by domestic processors, go well beyond any measures discussed and analyzed by the Council. In order to be considered by NMFS, all recommendations should be made through the Council for its consideration and analysis. Since passage of the American Fisheries Act of 1995, TALFF for mackerel may not be specified unless recommended by the appropriate Regional Fishery Management Council. However, NMFS may adjust JVP up to 15,000 mt, the level preferred by the commenter, provided certain conditions are met.

Comment 2: One commenter observed that the Atlantic mackerel specifications should be set for 2 fishing years, rather than 1.

Response 2: Setting the specifications for more than 1 year is not allowed under the FMP.

Comment 3: One commenter argued that there was not ample time to comment on proposed 2000 specifications. The draft EA/RIR/IRFA document was posted on the Internet in November 1999 and the comment period was only January 20, 2000, through February 4, 2000.

Response 3: The draft EA/RIR/IRFA document was posted on the Internet January 6, 2000, and the comment period was January 5, 2000 through February 4, 2000, allowing 30 days for written comments. NMFS believes that this is an adequate amount of time to solicit comments and notes that a 30-day comment period has been used for all Mid-Atlantic Council annual specifications for the past 10 years.

Comment 4: One commenter stated that very few vessels actually direct effort on both *Loligo* and *Illex* in a given year. If the first part of the year is closed to *Loligo* fishing when the proposed trimester quota is harvested, squid fishermen will have few, if any, other fisheries in which to participate.

Response 4: The commercial fishery for *Loligo* is primarily prosecuted with otter trawls and often harvests a mix of species, including *Loligo*, scup, black sea bass, summer flounder, Atlantic mackerel, and silver hake. Although the DAH for *Loligo* is less in 2000 than in 1999, the establishment of seasonal quotas for each of the trimesters preserves the percent of harvest for each of those 3 periods, based on 1994–1998 landings patterns. *Loligo* matures in a year or less from birth, therefore it is hoped that stock recovery will be rapid and higher DAHs will be possible within the next few years.

Comment 5: One commenter asked where in the draft EA/RIR/IRFA document are figures and information regarding the profile of the recreational squid fishery?

Response 5: In Section 8.4, on page 43 of the EA/RIR/IRFA document there is a discussion of the recreational squid fishery. The primary use of squid in the recreation sector is for bait.

Comment 6: Several commenters disagree with the 38 percent reduction in *Loligo* quota from 1999 and requested that the *Loligo* 2000 ABC be set at the 1999 ABC level of 21,000 mt.

Response 6: Because *Loligo* has been designated as overfished, the Council is required under the Magnuson-Stevens Act to implement a stock rebuilding strategy that will allow the *Loligo* stock to rebuild to levels that will produce the maximum sustainable yield (B_{MSY}) in as short a time period as possible, not to exceed 10 years. Stock projections from Stock Assessment Workshop (SAW)–29 indicated that the stock would rebuild to the B_{MSY} level in 3 to 5 years if the fishing mortality rate is reduced below the level that would allow the stocks to produce MSY (F_{MSY}). As a result, the Council recommended, and NMFS implements by this action, an ABC specification for 2000 consistent with landings that would result from a fishing mortality rate of 90 percent of F_{MSY}, or 13,000 mt. This specification represents an 8,000 mt reduction from the 21,000-mt ABC specified in 1999. However, the specification represents only an 18-percent reduction in landings relative to the average landings for the past 3 years (1996–1998). Specifying the *Loligo* 2000 ABC at the 1999 ABC level of 21,000 mt would conflict with the requirements of the Magnuson-Stevens Act to end overfishing and rebuild the resource.

Comment 7: Because of the small 2000 *Loligo* specification, one commenter stated that factory vessels will have the capacity to control the entire trimester quota allocation.

Response 7: Management advice from SAW–29 made special note that yield from the *Loligo* fishery should be distributed throughout the fishing year. Given that the current permitted fleet historically has demonstrated the ability to land *Loligo* in excess of the quota specified for 2000, the Council recommended, and NMFS has approved, a management action to sub-divide the annual quota into three quota periods (trimesters). The quota, which is allocated to each period based on the proportion of historical landings occurring in each trimester from 1994–1998, is divided as follows: Period I (January–April) is 5,460 mt (42 percent of the total); Period II (May–August) is 2,340 mt (18 percent of the total); and Period III (September–December) is 5,200 mt (40 percent of the total). NMFS believes that allocation of seasonal quotas allows all vessels to utilize the entire trimester quota allocations, and notes there is no information available to indicate that factory vessels will have more disproportionate access to *Loligo* than they had under the annual quota system.

Comment 8: One commenter stated that the proposed rule does not set forth or project the 1999 *Loligo* landings.

Response 8: On page 5 of the EA/RIR/IRFA, supporting documents for the annual specifications, Table 2, lists the preliminary *Loligo* landings through September 11, 1999, as 11,004 mt.

Comment 9: One commenter believed that NMFS disregarded the best available scientific information and failed to provide updated estimates to reconcile the impacts of predators on the *Loligo* stock. The commenter also asked what are the agency's updated marine mammal consumption estimates (for *Loligo*), based on the updated mammal stock assessments as required by the Marine Mammal Protection Act, how has the agency taken these energetic requirements into consideration, and how have these large removal levels impacted *Loligo* stock survey and biomass estimates. The commenter believed that the proposed rule did not appear to address this important issue about total *Loligo* squid

mortality and ,therefore, did not use the best available scientific information.

Response 9: Loligo squid is an important forage species consumed in quantity by many fish, bird, and marine mammal predators. Unfortunately, there is currently no way to estimate the amount of *Loligo* taken by marine mammals because there are too many variables to consider. Natural mortality (*e.g.,* primarily predation) and human predation (fishing mortality) are ''additive'' as rates. As human predation increases, the resulting total mortality increases. The only element in the total mortality that can be controlled at this time is human predation. NMFS believes that the final *Loligo* specifications are based on the best scientific information available.

Comment 10: One commenter asked since real-time monitoring is critical but not a component of the current plan, how can NMFS accurately monitor the *Loligo* specifications and determine the status of the stock?

Response 10: NMFS currently collects landings for *Loligo* every week via the IVR dealer reporting system. These electronic reports are then followed by detailed dealer and vessel reports that are submitted monthly. The IVR system allows NMFS to monitor accurately the *Loligo* specifications and determine the status of the stock.

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS completed a final regulatory flexibility analysis (FRFA) that contains the items specified in 5 U.S.C. sec. 604(a). The FRFA is as follows:

Final Regulatory Flexibility Analysis for Atlantic Mackerel, Squid, and Butterfish 2000 Specifications

Need for, and Objectives of, the Rule

This rule is needed to establish annual specifications for the Atlantic mackerel, squid and butterfish (MSB) fisheries and to prevent circumvention of a mesh restriction. The intent of this rule is to comply with the regulations for MSB that require the National Marine Fisheries Service (NMFS) to publish specifications for each fishing year to conserve and manage the resource in compliance with the regulations, fishery management plan (FMP), and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Public Comments

Three comments were submitted on the initial regulatory flexibility analysis (IRFA). These comments are addressed in the Comments and Responses section of the preamble to the final rule. No significant issues were raised by these comments, and no changes were made to the rule as a result of these comments.

Number of Small Entities

There are 443 vessels fishing for *Loligo,* 77 for *Illex,* 443 for butterfish, and 1,980 for Atlantic mackerel in 1997 that would likely be impacted by the 2000 specifications. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The final *Illex,* butterfish, and Atlantic mackerel specifications represent no constraint on vessels in these fisheries as there exists a surplus between the proposed specifications and the actual landings for these species in recent years. The final specifications for *Loligo* represent an 18-percent reduction in landings compared to the average last 3 years' (1996–1998) landings. This reduction may result in a 5 to 10 percent revenue reduction (all species combined) for 121 of 443 vessels that reported landing *Loligo* in 1997. The remaining vessels (322) are expected to experience a reduction in revenues of less than 5 percent.

Cost of Compliance

No additional costs of compliance, including those associated with recordkeeping and reporting, would result from the implementation of the quotas. There are no recordkeeping or reporting requirements associated with this rule. The prohibition on the use of any combination of mesh or liners in the Loligo fishery that effectively decreases the mesh size below the minimum mesh size of 1⅞ in (48 mm) will not adversely impact any small entity that is not circumventing the mesh size regulations by using a larger codend. No additional gear is needed to comply with this restriction.

Minimizing Significant Impacts

Alternatives considered and rejected for these four species were detailed in the IRFA. A review of the impacts of the final specifications, including alternatives to the final specifications, indicates that the impacts associated with the selected measures for Atlantic mackerel, *Illex,* and butterfish will not create significant economic impacts on small entities. As for *Loligo,* of the 443 vessels that reported landing *Loligo* in 1997, 121 vessels would be expected to experience a reduction in total gross revenues (all species combined) between 5 and 10 percent as a result of the 18 percent reduction in the *Loligo* quota in 2000. This represents 27.3 percent of the vessels that landed *Loligo* in 1997. The remaining vessels (322, or 72.7 percent) are expected to experience a reduction in total gross revenues (all species combined) of less than 5 percent as a result of the 18 percent reduction in the *Loligo* quota in 2000.

While all other considered alternatives for Atlantic mackerel would result in similar impacts on small entities, two of the three alternatives were found inconsistent with the FMP. The third alternative eliminated joint venture processing (JVP). NMFS believes JVP is necessary at this time to provide another opportunity for U.S. vessels to participate in joint venture fisheries. The selected *Loligo* alternative represented the alternative most consistent with the stated objectives of applicable statutes and the FMP. The rejected alternative resulted in 161 of 443 vessels being impacted (compared to 121 of 443 under the adopted alternative). Specifying the *Loligo* 2000 ABC at the 1999 ABC level of 21,000 mt was not analyzed by the Council because it would conflict with the requirements of the Magnuson-Stevens Act to end overfishing and rebuild the resource. The selected *Illex* alterative represented the alternative most consistent with the stated objectives of applicable statutes and the FMP. Alternatives considered and rejected for butterfish would have been detrimental to the stock and were not consistent with the FMP. The selected alternative was consistent with stated objectives of the applicable statutes and the FMP.

The final rule minimizes the economic impact on small entities by establishing a mechanism (the trimester quota system) of spreading the total quota throughout the year. The effect of this is to enable fishermen to fish for *Loligo* on a more consistent basis and to ensure that there is some quota available for harvest during the winter period when prices are higher. It also minimizes impacts on small entities by not establishing more restrictive quotas that were considered.

A copy of the IRFA can be obtained from the NMFS Northeast Regional Office (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (AA), finds that it would be contrary to the public interest to delay for 30 days the effectiveness of the quotas, § 648.21(e) (distribution of the *Loligo* quota among three periods and the overage deduction provision), and § 648.22 (fishery closures), because the quota for Period I will most likely

be reached shortly, and a delay in the effectiveness of these regulations will prevent NMFS from closing the *Loligo* fishery for Period I in a timely manner. If the Period I fishery is not closed in a timely manner and the quota is exceeded, NMFS will be required to deduct the Period I quota overage from the quota allocated to Period III. However, Period III occurs at a time of year when fishermen receive higher prices for *Loligo*. As a result, the inability to restrict *Loligo* landings to the quota for Period I would cause fewer higher priced fish to be available for harvest in Period III, thereby reducing fishermen's profits. For these reasons, the AA finds good cause under 5 U.S.C. sec. 553(d)(3) not to delay for 30 days the effectiveness of the quotas and §§ 648.21(e) and 648.22.

List of Subjects 50 in CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.21, paragraph (e) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(e) *Distribution of annual commercial quota.* (1) Beginning January 1, 2000, a commercial quota will be allocated annually into three periods, based on the following percentages:

Period	Percent
I—January–April	42
II—May–August	18
III—September–December	40

(2) Beginning January 1, 2000, any underages of commercial period quota for Periods I and II will be applied to Period III after November 15 of the same year and any overages of commercial quota for Periods I and II will be subtracted from Period III after November 15 of the same year.

3. In § 648.22, paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* NMFS shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Administrator projects that DAH will be attained for mackerel, NMFS shall close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. NMFS shall close the directed fishery in the EEZ for *Loligo* when 90 percent is harvested in Periods I and II, and when 95 percent of DAH has been harvested in Period III. The closure of the directed fishery shall be in effect for the remainder of the fishing period with incidental catches allowed as specified in paragraph (c) of this section. NMFS shall close the directed fishery in the EEZ for *Illex* or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of the fishing year with incidental catches allowed as specified in paragraph (c) of this section.

* * * * *

4. In § 648.23, paragraph (c) is revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration or other means that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

* * * * *

[FR Doc. 00–7514 Filed 3–22–00; 4:48 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991228354–0078–02; I.D. 032100C]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Fishery for *Loligo* Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the exclusive economic zone (EEZ) is closed. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) per trip of *Loligo* squid for the remainder of Quota Period I. This action is necessary to prevent the fishery from exceeding the Period I quota and allow for rebuilding of this overfished stock, while allowing for fishing throughout the year.

DATES: Effective 0001 hours, March 25, 2000, through 0001 hours, May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104, fax 978–281–9135, e-mail *myles.a.raizin@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require annual specifications for initial optimum yield as well as the amounts for allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described at § 648.21.

The 2000 specification of DAH for *Loligo* squid was set at 13,000 mt as part of the Atlantic mackerel, squid, and butterfish specifications published elsewhere in the Rules section of today's *Federal Register*. This amount is allocated among three quota periods as indicated in the following table.

TABLE 2.—LOLIGO QUOTA PERIOD ALLOCATIONS

Quota Period	Percent	Metric Tons
I (Jan-Apr)	42	5,460
II (May-Aug)	18	2,340
III (Sep-Dec)	40	5,200
Total	100	13,000

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 90 percent of the DAH for *Loligo* squid is harvested in either Period I or II, or 95 percent is harvested in Period III. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. NMFS has determined, based on vessel and dealer logbook data, that 90 percent of the DAH for *Loligo* squid in Period I has been harvested. Therefore, effective 0001 hours, March 25, 2000, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) per trip. The directed fishery will reopen effective 0001 hours, May 1, 2000, which marks the beginning of Quota Period II.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 22, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7513 Filed 3–22–00; 4:30 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000214041–0081–02; I.D. 012100C]

RIN 0648–AN50

Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Fishery Line Clipper and Dipnet Requirement; Guidelines for Handling of Sea Turtles Brought Aboard Hawaii-based Pelagic Longline Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; gear requirements.

SUMMARY: NMFS issues a final rule to require the possession and use of line clippers and dip nets aboard vessels registered for use under a Hawaii pelagic longline limited access permit to disengage sea turtles hooked or entangled by longline fishing gear. The final rule requires the use of specific methods for the handling, resuscitating, and releasing of sea turtles. The intended effect of the measures is to minimize the mortality of, and injury to, sea turtles hooked or entangled by longline fishing gear.

DATES: Effective April 27, 2000.

ADDRESSES: Copies of the environmental assessment (EA) and final regulatory flexibility analysis (FRFA) prepared for this action may be obtained from Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700, and from Alvin Katekaru or Marilyn Luipold, PIAO.

FOR FURTHER INFORMATION CONTACT: Margaret Dupree or Marilyn Luipold, 808–973–2937.

SUPPLEMENTARY INFORMATION: The Hawaii-based pelagic longline fishery is managed under the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (FMP). The FMP was prepared by the Western Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 660.

On November 26, 1999, the United States District Court, District of Hawaii, entered an Order in *CMC v. NMFS* directing NMFS to require, within 4 months of the date of entry of the Order, ''every vessel with a Hawaii longline limited entry permit to carry and use line clippers and dip nets to disengage any hooked or entangled sea turtles with the least harm possible to the turtles.'' NMFS published a proposed rule on February 17, 2000 (65 FR 8107), that provided background. That background is not repeated here.

Comments and Responses

Comment: One commenter objected to the requirement that all vessels registered for use under a Hawaii pelagic longline limited access permit carry and use a line clipper and dip net. The commenter believes longline fishermen targeting tuna south of 24° N. lat. should be exempt from the requirements because they do not experience major interactions with sea turtles or sea birds.

Response: Sea turtles may interact with longline gear set for tuna, as well as swordfish, and in areas south of 24° N. lat. Embedded hooks or entangled line left on a turtle may seriously injure it and result in mortality once the turtle is released. Vessels registered under a Hawaii longline limited access permit deploy longline gear, and therefore, NMFS considers it necessary to require such vessels to possess gear intended to assist with disengaging sea turtles hooked or entangled by longline fishing gear. NMFS continues to explore and consider other appropriate mitigation measures.

The final rule is unchanged from the proposed rule, with the exception of one change to increase the clarity of the rule text. The phrase ''comply with'' has been substituted for the term ''follow'' in 50 CFR 660.22(dd).

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an environmental assessment/regulatory impact review/ initial regulatory flexibility analysis (EA/RIR/IRFA). No public comments were received on the IRFA (summarized in the **Federal Register** on February 17, 2000, at 65 FR 8107).

A summary of the final regulatory flexibility analysis (FRFA) follows:

The fishery consists of 114 active vessels, all of which are considered small entities, and all of which would be affected. The rule does not contain any reporting or record keeping requirements and does not duplicate, overlap, or conflict with any other relevant Federal rules.

The preferred alternative, as set forth in this final rule, meets the objective of the District Court order while minimizing the economic impacts on fishery participants. It accomplishes this by establishing gear requirements based on performance and design standards, rather than requiring the purchase and use of specific devices. Total cost for the materials to fabricate and/or purchase line clippers and dip nets is estimated to be $250. The exact cost of resuscitating a sea turtle, as described herein, is not known; however, it is expected to be minimal.

In addition to the preferred alternative, two other alternatives were evaluated. The first, a ''no action'' alternative, would impose no cost burden on small entities; however, this alternative would fail to comply with the November 26, 1999, District Court order. The other alternative would require each permitted Hawaii pelagic longline vessel to purchase and carry on board a specific, prefabricated line clipper and sea turtle dip net, as well as require vessel operators to try and resuscitate inactive or comatose turtles. This alternative was rejected in favor of the preferred alternative. Although the preferred alternative also requires resuscitation of sea turtles, it proposes design standards for line clippers and dip nets rather than requiring the purchase of prefabricated items. Specifying design standards encourages innovation and is likely to minimize compliance costs. Moreover, such prefabricated line clippers and dip nets are not readily available in the commercial market. This rule would result in costs that represent less than 1 percent of the average exvessel revenue in 1998. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

An informal consultation under the Endangered Species Act was concluded on January 20, 2000. As a result of the informal consultation, the Regional Administrator determined that fishing activities conducted under this rule are not likely to affect adversely endangered or threatened species or critical habitat.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Fishing gear, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: March 23, 2000.

Andrew J. Kemmerer,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.22, new paragraphs (cc) and (dd) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(cc) Fail to carry line clippers meeting the minimum design standards as specified in § 660.32(a)(1), and a dip net as required under § 660.32(a)(2), on board a vessel registered for use under a Hawaii longline limited access permit.

(dd) Fail to comply with the sea turtle handling, resuscitation, and release requirements specified in § 660.32(b) through (d), when operating a vessel registered for use under a Hawaii longline limited access permit.

3. A new § 660.32 is added to part 660 to read as follows:

§ 660.32 Sea turtle take mitigation measures.

(a) *Possession and use of required mitigation gear.* Line clippers meeting minimum design standards as specified in paragraph (a)(1) of this section and dip nets meeting minimum standards prescribed in paragraph (a)(2) of this section must be carried aboard vessels registered for use under a Hawaii longline limited access permit and must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(1) *Line clippers.* Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (figure 1). The minimum design standards are as follows:

(i) *A protected cutting blade.* The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) *Cutting blade edge.* The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) *An extended reach holder for the cutting blade.* The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) *Secure fastener.* The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(2) *Dip nets.* Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section nets are:

(i) *An extended reach handle.* The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(ii) *Size of dip net.* The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm 7.62 cm).

(b) *Handling requirements.* (1) All incidentally taken sea turtles brought aboard for dehooking and/or disentanglement must be handled in a manner to minimize injury and promote post-hooking survival.

(2) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in paragraphs (c) and (d) of this section.

(3) If a sea turtle is too large or hooked in such a manner as to preclude safe boarding without causing further damage/injury to the turtle, line clippers

described in paragraph (a)(1) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(c) *Resuscitation.* If the sea turtle brought aboard appears dead or comatose, the sea turtle must be placed on its belly (on the bottom shell or plastron) so that the turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. A reflex test, performed by gently touching the eye and pinching the tail of a sea turtle, must be administered by a vessel operator, at least every 3 hours, to determine if the sea turtle is responsive. Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance may be placed into a container holding water. A water-soaked towel placed over the eyes, carapace, and flippers is the most effective method in keeping a turtle moist. Those that revive and become active must be returned to the sea in the manner described in paragraph (d) of this section. Sea turtles that fail to revive within the 24–hour period must also be returned to the sea in the manner described in paragraph (d)(1) of this section.

(d) *Release.* Live turtles must be returned to the sea after handling in accordance with the requirements of paragraphs (b) and (c) of this section:

(1) By putting the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and releasing the turtle away from deployed gear; and

(2) Observing that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

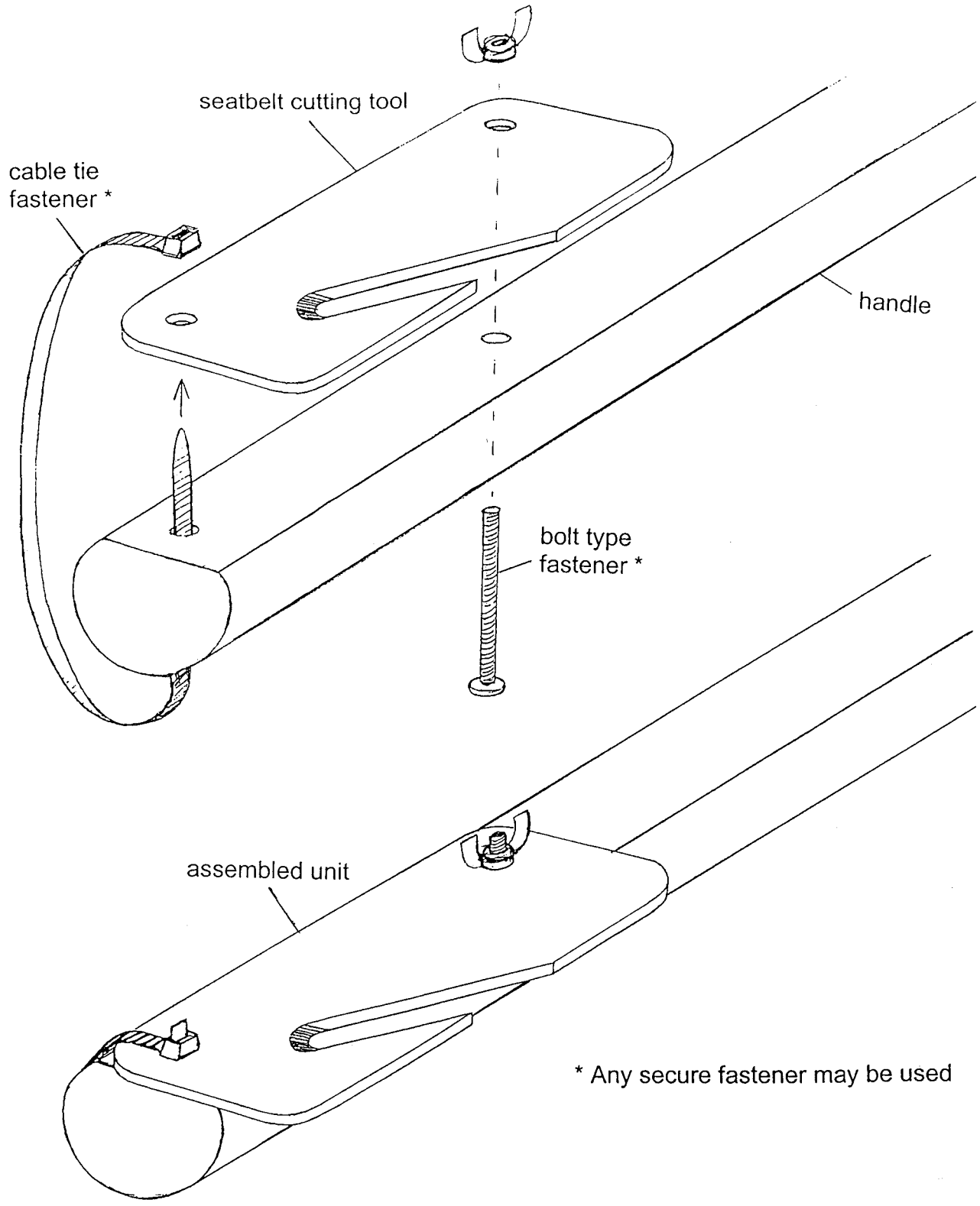


Figure 1 – Sample Fabricated Arceneaux Line Clipper

[FR Doc. 00–7695 Filed 3–24–00; 1:18 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 563c, 563g

[No. 2000–31]

RIN 1550–AB38

Transfer and Repurchase of Government Securities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to remove its regulation on the transfer and repurchase of government securities. This regulation is unnecessary and is overly burdensome to savings associations.

DATES: Comments must be received on or before April 27, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Attention Docket No. 2000–31. Hand deliver comments to Public Reference Room, 1700 G Street, NW., lower level, from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Ed O'Connell, (202) 906–5694, Manager, Supervision Policy: or Teresa Scott (202) 906–6478, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

OTS regulations at 12 CFR 563.84 govern the transfer and repurchase of government securities under certain circumstances where the savings association is obligated to repurchase.[1] This rule applies to repurchase obligations evidencing an indebtedness arising from a transfer of direct obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or any agency of the United States.

The rule prohibits savings associations from issuing repurchase agreement obligations in denominations under $100,000 and a maturity of 90 days or more, unless the savings association issues the obligation to an institution whose accounts or deposits are insured by the Federal Deposit Insurance Corporation (''FDIC'') or to a broker or dealer registered with the Securities and Exchange Commission. Repurchase agreement obligations under $100,000 with a maturity of less than 90 days are subject to various consumer protection and other requirements. Specifically, the rule: (1) Mandates that all such agreements, related advertisements and offering statements must include a legend indicating that the obligation is not a savings account or deposit and is not insured by the FDIC; (2) prohibits savings associations from making specified representations regarding deposit insurance, guarantees, etc.; (3) requires the purchaser under the repurchase agreement to obtain a perfected security interest in the securities under applicable state law; (4) requires that the value of the security underlying the repurchase agreement be maintained at a level at least equal to the principal amount of the repayment obligation; (5) requires that savings associations issuing repurchase agreements to the public make full and accurate disclosures of all material information regarding the repurchase agreement; (6) imposes additional requirements on certain renewals beyond 89 days; and (7) requires a savings association to provide additional safeguards and financial disclosures if it does not meet specified requirements regarding total capital.[2]

OTS is proposing to remove § 563.84 because it is unnecessary and imposes overly burdensome requirements on savings associations. One of the original purposes of the predecessor of § 563.84 was to ensure that savings associations would not use repurchase agreements as a method of offering small denomination accounts to avoid existing interest rate ceiling restrictions on deposit accounts.[3] In 1979, the Federal Home Loan Bank Board (FHLBB) issued a policy statement prohibiting savings associations from entering into any government securities repurchase agreements in amounts under $100,000, except with federally insured depository institutions or with broker dealers. Because the potential for circumvention of the maximum interest rate ceiling was reduced if the maturity of the agreement was less than 90 days, the FHLBB revised the policy statement to permit short term agreements in amounts under $100,000, subject to certain consumer protections.[4] The FHLBB codified the policy statement in its regulations in 1982 and expanded consumer protection requirements.[5]

It is no longer necessary to retain § 563.84 to prevent evasions of maximum interest rate ceilings on deposit accounts. Interest rate ceilings have not been in effect since March of 1986 when the FHLBB's authority to set these ceilings expired.[6] Savings associations, of course, still may not pay interest on commercial checking accounts.[7] However, OTS has concluded that federal savings associations may offer various sweep accounts to transfer idle, non-interest bearing demand deposit account (DDA) checking funds to investment vehicles to generate earnings.[8] OTS has

[1] Under these repurchase obligations, a savings association obtains funds by selling government securities, and simultaneously agrees to buy back the securities at a specified price and date.

[2] Under this requirement, a savings association's total capital must equal one percent of its liabilities plus 20 percent of its classified assets.

[3] *See* 12 CFR 531.12, published 44 FR 33669 (June 12, 1979).

[4] 44 FR 46445 (August 6, 1979).

[5] 47 FR 23140 (May 27, 1982).

[6] As of March 31, 1986, the FHLBB's authority to regulate payment of interest under section 5B of the Federal Home Loan Bank Act expired. 12 U.S.C. 1425b (1980). The FHLBB amended its regulations to reflect these changes on March 31, 1986. *See* 51 FR 10810 (March 31, 1986).

[7] 12 U.S.C. 1464(b)(1)(B)(i).

[8] Op. Chief Counsel (March 2, 1998). Typically, under these transactions, funds are swept out of a DDA at the end of a business day and into an

specifically stated that these sweep accounts, including sweep arrangements that use government security repurchase agreements, are permissible notwithstanding the prohibition on the payment of interest on DDAs.

To the extent that § 563.84 was designed to protect consumers who buy United States government securities under repurchase agreements, OTS believes that existing statutes, regulations and guidance already adequately serve this function. The commercial repurchase market is much more developed than when the regulation was adopted and is regulated now in other ways. The Government Securities Act of 1986 (the GSA),[9] for example, protects investors in government securities by establishing appropriate financial responsibility and custodial standards. Under the Department of Treasury's implementing regulations,[10] a thrift that holds government securities for another party to a hold-in-custody repurchase agreement must comply with requirements for safeguarding and custody of the securities. The savings association is also subject to other provisions requiring written agreements, confirmations and disclosures, including disclosures that the obligation is not a deposit and is not insured by the FDIC.[11] Moreover, Thrift Bulletin 23–2, Interagency Statement on Retail Sales of Non-deposit Investment Products (February 22, 1994) provides for certain customer protections, including disclosures, for retail sales of non-deposit investment products, including government securities repurchase agreements. In addition, OTS notes that state and federal anti-fraud provisions, which generally require the disclosure of facts that would be material to a decision to invest in a security, also apply to repurchase transactions.[12]

OTS also believes that § 563.84 may unduly restrict savings associations' ability to engage in certain types of transactions. Since none of the other federal banking agencies currently have similar provisions, OTS believes that the retention of this rule may have a negative impact on the ability of OTS-regulated institutions to compete on an equal footing.

For example, in a recent opinion letter, OTS clarified the authority of savings associations to offer various types of sweep accounts, including the use of repurchase agreements in sweep accounts.[13] Section 563.84, however, requires that the interest of a repurchase agreement purchaser in the security or securities underlying the repurchase agreement constitute a perfected security interest under applicable state law. Various state laws [14] no longer allow for the perfection of a security interest in a security through placement with a trustee, such as a Federal Home Loan Bank. Other perfection methods may be operationally impractical in the context of repurchase agreement sweep accounts that typically involve repeated collateralizations of varying dollar amounts.[15] As a result, this regulation may effectively bar savings associations' use of repurchase agreement sweep accounts to accommodate the cash management needs of their commercial customers. As noted above, other financial institutions are not subject to similar restrictions.

For these reasons, OTS is proposing to delete § 563.84. In the absence of this provision, federal savings associations would continue to be authorized to engage in repurchase agreements. This authority would be subject to applicable statutes and regulations, including the GSA, Treasury's implementing regulations, Thrift Bulletin 23–2, and state and federal securities laws. In addition, the Federal Financial Institutions Examination Council's Policy Statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others [16] provides safety and soundness guidance to depository institutions entering into repurchase agreements. The FFIEC Policy Statement cautions that institutions should have adequate policies and controls for their particular circumstances, provides explicit guidance for controlling collateral for securities sold under an agreement to repurchase, and contains other pertinent guidance.

Comments; Accompanying Direct Final Rule

If no significant adverse comments are timely received, no further activity is contemplated relative to this proposed rule. Rather, the related direct final rule published elsewhere in this issue of the **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule. Because OTS will not institute a second comment period for this proposed rule, any parties interested in commenting should do so during this comment period.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[17] the Director certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would merely remove an unnecessary regulation that imposes overly burdensome requirements on all savings associations, including small savings associations.

Executive Order 12866

OTS has determined that this proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this proposed rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing polices that have federalism implications or taking actions that preempt state law. OTS has determined that this proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and will not preempt State law.

investment vehicle, and swept back to the DDA the next morning to pay checks as needed. This process is repeated each business day.

[9] The Government Securities Act of 1986 (Pub. L. 99–571,100 Stat 3208), as amended by, Pub. L. 103–202, 107 Stat 2344.

[10] 17 CFR parts 400 through 450.

[11] Savings associations that enter into repurchase agreements should pay particular attention to the requirements and required disclosures at 17 CFR 403.5.

[12] *See* The Federal Financial Institutions Examination Council's Policy Statement on Repurchase Agreements of Depository Institutions with Security Dealers and Others, 63 FR 6935 (February 11, 1998) and Thrift Bulletin 23–2.

[13] Op. Chief Counsel (March 2, 1998).

[14] *See* Uniform Commercial Code, Article 8, as amended by the various states.

[15] Although this rule eliminates the requirement that the purchaser under the repurchase agreement obtain a perfected security interest in the securities under state law, 17 CFR 450.4 of the Treasury GSA regulations provides specific protections for safeguarding and custody of the securities.

[16] 63 FR 6935 (February 11, 1998).

[17] Pub. L. No. 96–354, 5 U.S.C. 601.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563c

Accounting, Savings associations, Securities.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831i, 3806; 42 U.S.C. 4106.

§ 563.84 [Removed]

2. Section 563.84 is removed.

PART 563c—ACCOUNTING REQUIREMENTS

3. The authority citation for part 563c continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78m, 78n, 78w.

4. Section 563c.101 is amended by revising paragraph (c) to read as follows:

§ 563c.101 Application of this subpart.

* * * * *

(c) Any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.74 and debt securities under § 563.80 and § 563.81 of this chapter.

PART 563g—SECURITIES OFFERINGS

5. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

§ 563g.3 [Amended]

6. Section 563g.3 is amended by removing and reserving paragraph (a).

Dated: March 21, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–7420 Filed 3–27–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–35–AD]

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Eurocopter France Model AS332C, L, and L1 helicopters. This proposal would require inspecting the horizontal stabilizer spar tube (spar tube) for corrosion, hardness, cracks, and scratches, and if necessary, replacing any unairworthy spar tube and bushing with an airworthy spar tube and bushing. This proposal is prompted by the loss of a horizontal stabilizer in flight due to a spar tube failure. The actions specified by the proposed AD are intended to prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–35–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS332C, L, and L1 helicopters. The DGAC advises that a horizontal stabilizer was lost in flight due to spar tube fatigue failure.

Eurocopter France has issued Eurocopter Service Bulletin 01.00.57R1, dated November 24, 1999 (SB), which specifies inspecting any spar tube, part number (P/N) 330A13–2024–01, –02, –03, –04, installed on metal horizontal stabilizers, P/N's 332A13–1000–00, –01, –02, –03 and 332A13–1040–00, –01, for corrosion, hardness, cracks, or scratches, and, if necessary, replacing the spar tubes and bushing. This SB was issued as a result of the loss of a horizontal stabilizer in flight due to spar tube failure. The failure of the spar tube was due to an improperly installed bushing that led to corrosion and fatigue

cracking. The failed spar tube also showed evidence of localized scoring and decarburization. The DGAC classified this SB as mandatory and issued AD 1999–039–073(A)R1, dated December 29, 1999, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS332C, L, and L1 helicopters of the same type design registered in the United States, the proposed AD would require inspecting any spar tube, P/N 330A13–2024–01, –02, –03, –04, installed on horizontal stabilizers, P/N's 332A13–1000–00, –01, –02, –03, and 332A13–1040–00, –01, for corrosion, hardness, cracks, or scratches. The AD would also require replacing the spar tube and bushing, as necessary, with an airworthy spar tube and bushing. The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 99–SW–35–AD.

Applicability: Model AS322C, L, and L1 helicopters with horizontal stabilizer spar tube (spar tube), part number (P/N) 330A13–2024–01, –02, –03, –04, installed on horizontal stabilizer, P/N 332A13–1000–00, –01, –02, –03 or 332A13–1040–00, –01, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters on which the horizontal spar tube (spar tube) composite bushing (bushing), P/N 330A13–2024–31, has been replaced and since replacement has accumulated:

(1) Less than 1400 hours time-in-service (TIS) or less than 30 calendar months:

(i) Prior to accumulating 1600 hours TIS or 32 calendar months, whichever occurs first, and thereafter at intervals not to exceed (NTE) 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube in accordance with (IAW) the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of Eurocopter France Service Bulletin No. 01.00.57, Revision 1, dated November 24, 1999 (SB).

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, or crack inspection of paragraph 2.B.2. of the SB, replace the bushing with a new bushing, before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2. of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) 1400 or more hours TIS or 30 or more calendar months:

(i) Within 200 hours TIS or 2 calendar months, whichever occurs first, and thereafter at intervals NTE 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, or crack inspection of paragraph 2.B.2 of the SB, replace the bushing with a new bushing before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2 of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(b) For all spar tubes:

(1) With less than 7500 hours TIS or 144 calendar months since original installation:

(i) Prior to accumulating 7500 hours TIS or 144 calendar months, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(1)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) With 7500 or more hours TIS or 144 or more calendar months since original installation:

(i) Within 500 hours TIS or 12 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(2)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of the SB.

(3) After accomplishing the requirements of either paragraph (b)(1) or (b)(2) of this AD, as applicable, thereafter, at intervals NTE 7500 hours TIS or 144 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1999–039–073(A)R1, dated December 29, 1999.

Issued in Fort Worth, Texas, on March 21, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7553 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Consolidation of the Ports of Milwaukee and Racine

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amending the Customs Regulations pertaining to the field organization of the Customs Service by consolidating the ports of Milwaukee, Wisconsin, and Racine, Wisconsin and also expanding the area of coverage in southeast Wisconsin. This change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better services to carriers, importers and the general public.

DATES: Comments must be received on or before May 30, 2000.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U. S. Customs Service, 1300 Pennsylvania Avenue NW., Third Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Betsy Passuth, Office of Field Operations, 202–927–0795.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3 of the Customs Regulations (19 CFR 101.3) by consolidating the ports of Milwaukee, Wisconsin, and Racine, Wisconsin. Both are currently listed as ports under § 101.3(b), Customs Regulations (19 CFR 101.3(b)). The consolidated port would be renamed the Port of Milwaukee-Racine. Consolidating the two ports will reduce administrative costs, without impairing service to area businesses or to the general public, and will provide a more efficient use of Customs personnel and resources. The proposal, if adopted, will improve service to the public by making better use of staffing resources.

Currently, southeast Wisconsin is served by the Customs ports of Racine and Milwaukee, both operating in limited areas with minimal staffing. Budget restrictions have prevented Customs from allocating additional resources to the area.

Because Racine has only one inspector, services other than the filing of entries and manifests are restricted. If for any reason the inspector at Racine is not available, service is not available and entries must be filed at the Port of Milwaukee. The proposed consolidation of the ports of Racine and Milwaukee, which includes enlarging the overall area of the port to include four counties, would result in providing centralized full-time service to the entire area, not merely service to the former ports of Milwaukee and Racine. Personnel would be available to perform cargo examinations, private aircraft processing, and other services such as the processing of entries and manifests on an as needed basis at the port of Racine and all locations within this proposed consolidation.

Current Port Limits

The current port limits of the Port of Milwaukee are described in T.D. 72–105 (37 FR 7591) as encompassing all the territory within the counties of Milwaukee and Waukesha, Wisconsin.

The current port limits of the Port of Racine are described in T.D. 54884 (24 FR 5366) as the corporate limits of the city of Racine, the corporate limits of the city of Kenosha, and the townships of Mt. Pleasant and Somers, all in the state of Wisconsin.

Proposed Port Limits

The proposed port limits of the Port of Milwaukee-Racine will be the counties of Waukesha, Milwaukee, Racine and Kenosha in the state of Wisconsin.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Third Floor, Washington, DC 20229.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 7, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–7556 Filed 3–27–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD–05–99–097]

RIN 2115–AA97, AA98, AE46

OPSAIL 2000, Port of Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in the Port of Baltimore, Maryland for OPSAIL 2000 activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2000 events. This action will restrict vessel traffic in portions of the Inner Harbor, the Northwest Harbor, the Patapsco River, and the Chesapeake Bay.

DATES: Comments and related material must reach the Coast Guard on or before May 12, 2000.

ADDRESSES: You may mail comments and related material to Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 or deliver them to Room 119 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–99–097), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this regulation is 45 days. This time period is adequate to allow local input because the event is highly publicized and the shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Sail Baltimore is sponsoring OPSAIL 2000 activities in the Port of Baltimore, Maryland. Planned events include the arrival of 27 Tall Ships and other vessels on June 23, 2000 and a Parade of Sail and scheduled departure of those vessels on June 29, 2000.

The Coast Guard anticipates a large spectator fleet for these events. Operators should expect significant vessel congestion along the arrival and parade routes.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Baltimore and the waters of the Chesapeake Bay immediately prior to, during, and after the scheduled events. The regulations will provide for clear parade routes for the participating vessels, establish no wake zones along the parade routes, provide a safety buffer around the participating vessels while they are in transit, and in certain anchorage areas, modify existing anchorage regulations for the benefit of participants and spectators. The regulations will impact the movement of all vessels operating in the specified areas of the Port of Baltimore and the Chesapeake Bay.

It may be necessary for the Coast Guard to establish additional safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term ''passenger for hire'' is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term ''passenger'' is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Port of Baltimore for this event obtain up to date editions of National Ocean Service Charts 12278 and 12281 to avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2000 and spectator vessels in the Port of Baltimore for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Discussion of Proposed Rule

The OPSAIL 2000 vessels are scheduled to arrive on June 23, 2000 and will follow a parade route of approximately 3 nautical miles that includes specified waters of the Inner Harbor and Northwest Harbor. The OPSAIL 2000 vessels are scheduled to depart on June 29, 2000 and will follow a parade route of approximately 7 nautical miles that includes specified waters of the Inner Harbor, Northwest Harbor, and Patapsco River.

The safety of parade participants and spectators requires that spectator craft be kept at a safe distance from the parade routes during these vessel movements. The Coast Guard proposes establishing special local regulations for the areas through which the vessels will pass for the OPSAIL 2000 Tall Ships Arrival on June 23, 2000 and the OPSAIL 2000 Parade of Sail on June 29, 2000.

In addition to establishing special local regulations, we propose to establish temporary moving safety zones around OPSAIL 2000 vessels which are 175 feet or greater in length, to ensure the safety of participants and spectators immediately prior to, during, and following the parades.

The Coast Guard also intends to temporarily modify the existing anchorage regulations found at 33 CFR 110.158 to accommodate OPSAIL 2000 and spectator vessels. Anchorage No. 1, Anchorage No. 4, Anchorage No. 5, and Anchorage No. 6 will be designated exclusively for spectator vessels. Anchorage No. 3 will be designated exclusively for passenger vessels. Anchorage No. 2 will be closed to all vessels except OPSAIL 2000 vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Tall Ships Arrival on June 23, 2000 and the Parade of Sail on June 29, 2000. Although these regulations prevent traffic from transiting a portion of the Inner Harbor, Northwest Harbor, and Patapsco River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River in the Port of Baltimore, Maryland. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander (Aoax), Fifth Coast Guard District, 431Crawford Street, Portsmouth, Virginia 23704–5004.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C; this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**. By controlling vessel traffic during these events, this proposed rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.35T–05–097 to read as follows:

§ 100.35T–05–097 Special Local Regulations; OPSAIL 2000, Port of Baltimore, MD.

(a) *Definitions.* (1) *Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Official Patrol Vessel* includes all Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(3) *OPSAIL 2000 Vessel* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by Commander, Fifth Coast Guard District.

(4) *Parade of Sail* is the outbound procession of OPSAIL 2000 vessels as they navigate designated routes in the Port of Baltimore on June 29, 2000.

(5) *Tall Ships Arrival* is the inbound procession of OPSAIL 2000 vessels as they navigate designated routes in the Port of Baltimore on June 23, 2000.

(b) *Regulated areas.* (1) *Tall ships arrival are*a (all coordinates use datum: NAD 83): All waters of the Patapsco River, Baltimore, Maryland, between the Ferry Bar Channel-East Section and the Inner Harbor west bulkhead, bounded by a line drawn from the coordinates at position latitude 39°15′40″ N, longitude 076°34′50″ W, thence southeasterly to latitude 39°15′23.5″ N, longitude 076°34′44″ W, thence easterly to latitude 39°15′23.5″ N, longitude 076°33′53″ W.

(2) *Parade of Sail Area:* The waters of the Patapsco River, Northwest Harbor and Inner Harbor enclosed by:

Latitude	Longitude
39°15′40.5″ N	076°34′47.5″ W, to
39°15′04.9″ N	076°34′43.7″ W, and
39°14′07.5″ N	076°33′37.7″ W, to
39°12′46.3″ N	076°32′02.6″ W, to
39°10′ 24.8″ N	076°31′01″ W, to
39°12′06.3″ N	076°29′43.2″ W, to
39°13′22.3″ N	076°31′15.7″ W, to
39°15′40.2″ N	076°33′33.7″ W.

(c) *Special Local Regulations.* (1) Any person or vessel within the regulated area must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Captain of the Port so orders.

(2) Unless otherwise directed by the Captain of the Port, all vessels within the regulated area shall be operated at the minimum speed required to maintain steerage and shall avoid creating a wake.

(3) No vessel within the regulated area may anchor except in conformance with 33 CFR 110.158.

(4) The Coast Guard and Official Patrol vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (410) 576–2521 or 2693.

(5) The Captain of the Port will notify the public of any changes in the status of the regulated area by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective date:* (1) *Tall ships arrival area.* This section is effective from 9 a.m. until 6 p.m. on June 23, 2000.

(2) *Parade of Sail Area.* Paragraph (b)(2) of this section is applicable from 10:30 a.m. until 2:30 p.m. on June 29, 2000.

PART 110—[AMENDED]

3. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From 10:30 a.m. until 2:30 p.m. on June 29, 2000, § 110.158 is amended by adding paragraph (c) to read as follows:

§ 110.158 Baltimore Harbor, MD

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, the following temporary regulations apply from 10:30 a.m. until 2:30 p.m. on June 29, 2000 for OPSAIL 2000.

(1) Anchorage No. 1, Anchorage No. 4, Anchorage No. 5, and Anchorage No. 6 are designated for the exclusive use of spectator vessels. ''Spectator vessels'' includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Baltimore to observe part or all of the events attendant to OPSAIL 2000.

(2) Anchorage No. 2 is designated for the exclusive use of OPSAIL 2000 vessels. ''OPSAIL 2000 Vessels'' includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by the Commander, Fifth Coast Guard District.

(3) Anchorage No. 3 is designated for the exclusive use of passenger vessels. ''Passenger vessel'' has the meaning of that term in 46 U.S.C. 2101(22).

PART 165—[AMENDED]

5. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

6. Add temporary § 165.T05–097 to read as follows:

§ 165.T05-097 Safety Zone; OPSAIL 2000, Port of Baltimore, MD.

(a) *Definitions.* (1) *Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by Commander, Fifth Coast Guard District.

(b) *Location.* The following areas are moving safety zones: All waters within 150 yards ahead of or 50 yards outboard or aft of any OPSAIL 2000 vessel which is 175 feet or greater in length, while operating on the Chesapeake Bay or its tributaries, north of the Maryland-Virginia border and south of latitude 39°35′00″.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within the regulated areas unless authorized to do so by the Captain of the Port. Any person or vessel authorized to enter the regulated areas must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Captain of the Port so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (410) 576–2521 or 2693.

(4) The Captain of the Port will notify the public of any changes in the status of this zone by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* This section is effective from 6 a.m. on June 23, 2000 to 11:30 p.m. on June 29, 2000.

Dated: March 15, 2000.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–7466 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD01–99–203]

RIN 2115–AA98, AE84, AE46

Temporary Regulations: OPSAIL 2000, Port of New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in Niantic Bay, Long Island Sound, the Thames River, and New London Harbor for OPSAIL 2000 Connecticut activities. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2000 Connecticut. This action is intended to restrict vessel traffic in portions of Niantic Bay, Long Island Sound, the Thames River, and New London Harbor.

DATES: Comments and related materials must reach the Coast Guard on or before May 12, 2000.

ADDRESSES: You may mail comments and related material to Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Ave, New Haven, CT 06512–3698. The Readiness/Support Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Readiness/Support Department between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Master Chief Kenneth G. Dolan, Group/MSO Long Island Sound, New Haven, Connecticut, (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–99–203), indicate the specific section of this document to which each comment applies, and give reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. The comment period for this regulation is 45 days. This time period is adequate to allow local input because the event is highly publicized, and the shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. Copies of this proposal will also be placed in the local notice to mariners.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Group/MSO Long Island Sound Readiness/Support Department at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary regulations are for OPSAIL 2000 Connecticut events in Niantic Bay, Long Island Sound and New London Harbor. These events will be held on July 11–12, 2000. The rule is proposed to provide for the safety of life and property on navigable waters.

Discussion of Proposed Rule

Operation Sail, Inc. is sponsoring a Parade of Tall Ships into New London Harbor. The Tall Ships and participating vessels will be at anchorage in Niantic Bay on July 11, 2000. On July 12, 2000, the Tall Ships and participating vessels will transit from Niantic Bay via Long Island Sound and the Thames River Federal Channel to the Port of New London. The Coast Guard expects a minimum of 5,000 spectator craft for this event. The proposed regulations create vessel movement controls, safety zones and temporary anchorage regulations. The regulations will be in effect at various times in Niantic Bay, Long Island Sound and New London Harbor during July 11 and 12, 2000. The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life and property. This proposed rulemaking is necessary to ensure the safety of life and property on the navigable waters of the United States.

Regulated Areas

The Coast Guard proposes to establish one regulated area in Niantic Bay during July 11–12, 2000. This proposed Regulated Area A is needed to protect the maritime public and participating vessels from possible hazards to navigation associated with the overnight anchoring of a large number of Tall Ships and their departure prior to the beginning of the Parade of Tall Ships into New London Harbor on July 12, 2000.

Regulated Area A includes all waters of Niantic Bay located on Long Island Sound within the following boundaries: beginning at a point 300 yards, bearing 203°T from Wigwam Rock 41°18′53″ N, 072°11′48″ W (NAD 1983), then to 41°18′53″ N, 072°10′38″ W (NAD 1983), then to 41°16′40″ N, 072°10′38″ W (NAD 1983), then to 41°16′40″ N, 072°11′48″ W (NAD 1983). This proposed area will be used as an anchorage area for vessels participating in the Parade of Tall Ships on July 12, 2000. This proposed regulated area is effective from 6 a.m., July 11, 2000 until 5 p.m., on July 12, 2000. Vessels transiting Regulated Area

A must do so at no wake speed or at speeds not to exceed 6 knots, whichever is less. Vessels transiting Regulated Area A must not maneuver within 100 yards of a Tall Ship or other vessel participating in OPSAIL 2000, unless authorized by the Captain of the Port or the Captain of the Port's on-scene representative.

Anchorage Regulations

The Coast Guard also proposes to establish temporary Anchorage Regulations for participating OPSAIL 2000 vessels and spectator craft. Current Anchorage Regulations in 33 CFR 110.147 will be temporarily suspended by this regulation and other Anchorage Grounds will be temporarily established.

The proposed anchorage regulations designate selected current or temporarily established Anchorage Grounds for spectator or OPSAIL 2000 participant vessel use only. They restrict all other vessels from using these anchorage grounds during various portions of the OPSAIL 2000 event. The anchorage grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL vessels and to protect boaters and spectator vessels from the hazards associated with the Parade of Tall Ships.

The Coast Guard proposes to temporarily suspend Anchorage Area C (see 33 CFR 110.147(3)), and redesignate it as Anchorage Area G, exclusively for spectator vessels exceeding 50 feet in length, carrying passengers for the viewing of the Tall Ships parade. Anchorage Area G will be established from 7:30 a.m., until 5 p.m., on July 12, 2000. The Coast Guard proposes to temporarily establish Anchorage Area H in Niantic Bay exclusively for the vessels participating in the Parade of Tall Ships. Anchorage Area H in Niantic Bay will be established from 6 a.m., on July 11, 2000 until 5 p.m., on July 12, 2000. Anchorage Area H is the same area designated as Regulated Area A. Therefore, within this area, vessels other than those participating in OPSAIL 2000 will not be able to anchor and will be able to transit at reduced speeds staying at least 100 yards away from any OPSAIL 2000 vessel.

The Coast Guard proposes to temporarily establish Anchorage Area I in the Thames River in the vicinity of the State Pier exclusively for vessels who have participated in the Parade of Tall Ships. Anchorage Area I will be established from 7:30 a.m., on July 12, 2000 until 5 p.m., on July 12, 2000. The Coast Guard proposes to temporarily establish Anchorage Area J, located in the Thames River on the eastern side of the Federal Channel, exclusively for spectator vessels exceeding 50 feet in length carrying passengers for the viewing of the Tall Ships parade. Anchorage Area J will be established from 7:30 a.m., until 5 p.m., on July 12, 2000.

Safety Zones

The Coast Guard proposes to establish two safety zones in the waters of Long Island Sound and New London Harbor. Safety Zone 1 includes all waters of the Thames River in New London Harbor, in the vicinity of the State Pier within the following boundaries: beginning at a point located on the west shore line of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W (NAD 1983), then to position 41°21′46″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′33″ W (NAD 1983), then along the shoreline to position 41°21′46″ N, 072°05′23″ W (NAD 1983). This safety zone will be used as a mooring and turning area for the Parade of Tall Ships at the conclusion of the parade and is effective from 7:30 a.m., on July 12, 2000, until 5 p.m., on July 12, 2000. Safety Zone 1 consists of the same area as Anchorage I.

Safety Zone 2 covers all waters of the Thames River within the following boundaries: beginning at the east side of the Federal Channel at the Thames River Rail Road Bridge in the Port of New London, in position 41°21′47.0″ N, 072°05′14.0″ W (NAD 1983), then southward along the east side of the Federal Channel to the New London Harbor Channel Lighted Buoy ''2'' (LLNR 21790) in approximate position 41°17′38″ N, 072°04′40″ W (NAD 1983), then to Bartlett Reef Lighted Bell Buoy ''4'' (LLNR 21065) in approximate position 41°15′38″ N, 072°08′22″ W (NAD 1983), then south to Bartlett Reef Lighted Buoy ''1'' (LLNR 21065) in approximate position 41°16′28″ N, 072°07′54″ W (NAD 1983), then to an area located, bearing 192°T, approximately 325 yards from Rapid Rock Buoy ''R'' (LLNR 21770) 41°17′07″ N, 072°06′09″ W (NAD 1983), then to position 41°18′04″ N, 072°04′50″ W (NAD 1983), which meets the west side of the Federal Channel, then along the west side of the Federal Channel to the Thames River Railroad Bridge in the Port of New London, in the position 41°21′46″ N, 072°05′23″ W (NAD 1983). This proposed area will be used for the parade route of Tall Ships and is effective from 7:30 a.m., on July 12, 2000, until 5 p.m., on July 12, 2000. No vessel may transit within Safety Zones 1 or 2 unless authorized by the Coast Guard Captain of the Port, Long Island Sound, or his on-scene representative.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of Long Island Sound, Niantic Bay, and the Thames River during the events, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect, mariners will be able to transit around these areas and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, local area committee meetings, and New London area newspapers. Mariners will be able to adjust their plans accordingly based on the extensive advance information. Additionally, these regulated areas have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels

intending to transit through Niantic Bay, portions of Long Island Sound and New London Harbor during various times from July 11–12, 2000. Although these regulations would apply to a substantial portion of Niantic Bay and New London Harbor, designated areas for viewing the Parade of Sail are being established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Vessels, including commercial traffic, will be able to transit around the designated areas. At no time will the Port of New London be closed to commercial traffic. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. In addition, the sponsoring organization, OPSAIL, Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs 34(f and h), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR 110

Anchorage grounds.

33 CFR 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110 and 165 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.T01–203 to read as follows:

§ 100.T01–203 Special Local Regulations: OPSAIL 2000 CT, Long Island Sound and the Thames River, Connecticut.

(a) *Regulated Area A location.* All waters of Niantic Bay located on Long Island Sound within the following boundaries: Beginning at a point 300 yards, bearing 203°T from Wigwam Rock 41°18′53″ N, 072°11′48″ W (NAD 1983), then 41°18′53″ N, 072°10′38″ W (NAD 1983), then 41°16′40″ N, 072°10′38″ W (NAD 1983) then to 41°16′40″ N, 072°11′48″ W (NAD 1983).

(b) *Special local regulations.* (1) Vessels transiting Area A must do so at no wake speed or at speeds not to exceed 6 knots, whichever is less.

(2) Vessels transiting Area A must not maneuver within 100 yards of a Tall Ship or an OPSAIL participating vessel unless they are specifically authorized to do so by Coast Guard Captain of the Port, Long Island Sound, or his on-scene representative.

(c) *Effective period.* This section is effective from 6 a.m., July 11, 2000 until 5 p.m., on July 12, 2000.

PART 110—ANCHORAGE REGULATIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From July 11, 2000 through July 12, 2000, § 110.147 is temporarily amended by suspending paragraph (a)(3) and adding new paragraphs (a)(7), (a)(8), (a)(9) and (a)(10) to read as follows:

§ 110.147 New London Harbor, Conn.

(a) * * *

(7) *Anchorage Area G.* In the Thames River southward of New London Harbor, bounded by lines connecting a point bearing 100°, 450 yards from New London Harbor Light, a point bearing 270° 575 yards from New London Ledge Light (latitude 41°18′21″ N., longitude 72°04′41″ W.), and a point bearing 270°, 1450 yards from New London Ledge Light. From 7:30 a.m., on July 12, 2000 through 5 p.m., on July 12, 2000, this anchorage is designated for the exclusive use of spectator vessels exceeding 50 feet in length carrying passengers for the viewing of the Tall Ships Parade.

(8) *Anchorage Area H.* All waters of Niantic Bay located on Long Island Sound within the following boundaries: beginning at a point 300 yards, bearing 203T from Wigwam Rock 41°18′53″ N, 072°11′48″ W (NAD 1983), then to 41°18′53″ N, 072°10′38″ W (NAD 1983), then to 41°16′40″ N, 072°10′38″ W (NAD 1983), then to 41°16′40″ N, 072°11′48″ W (NAD 1983). From 6 a.m., July 11, 2000 until 5 p.m., on July 12, 2000, this anchorage is designated exclusively for the use of vessels participating in the Parade of Tall Ships into New London Harbor on July 12, 2000.

(9) *Anchorage I.* All waters of the Thames River in New London Harbor, in the vicinity of the State Pier within

the following boundaries: beginning at a point located on the west shore line of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W (NAD 1983), then to position 41°21′46″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′33″ W (NAD 1983), then along the shoreline to position 41°21′46″ N, 072°05′23″ W (NAD 1983). From 7:30 a.m., on July 12, 2000 through 5 p.m. on July 12, 2000, this anchorage is designated for the exclusive use of vessels participating in the Parade of Tall Ships into New London Harbor.

(10) *Anchorage J.* All waters of the Thames River southward of New London Harbor, on the east side of the Federal Channel within the following boundaries: beginning at a point bearing 245°T, 290 yards from Eastern Point 41°19′07″ N, 072°04′42″ W (NAD 1983), then to position 41°19′01″ N, 072°04′30″ W (NAD 1983), then to position 41°18′46″ N, 072°04′36″ W (NAD 1983), then to position 41°18′44″ N, 072°04′49″ W (NAD 1983). This area is designated for the exclusive use of commercial vessels greater than 50 feet in length carrying passengers for the viewing of the Tall Ships parade from 7:30 a.m., on July 12, 2000, until 5 p.m., on July 12, 2000.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

5. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

6. Add temporary § 165.T01–203 to read as follows:

§ 165.T01–198 Safety Zones: OPSAIL 2000, Port of New London, Connecticut.

(a) The following areas are established as a safety zone:

(1) *Safety Zone 1.* Includes all waters of the Thames River in New London Harbor, in the vicinity of the State Pier within the following boundaries: beginning at a point located on the west shore line of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W (NAD 1983), then to position 41°21′46″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′33″ W (NAD 1983), then along the shoreline to position 41°21′46″ N, 072°05′23″ W (NAD 1983). This safety zone will be used as a mooring and turning area for the Parade of Tall Ships at the conclusion of the parade from 7:30 a.m., on July 12, 2000 until 5 p.m., on July 12, 2000.

(2) *Safety Zone 2.* Includes waters of the Thames River within the following boundaries: beginning at the east side of the Federal Channel at the Thames River Rail Road Bridge in the Port of New London, in position 41°21′47.0″ N, 072°05′14.0″ W (NAD 1983), then southward along the east side of the Federal Channel to the New London Harbor Channel Lighted Buoy ''2'' (LLNR 21790) in approximate position 41°17′38″ N, 072°04′40″ W (NAD 1983), then to Bartlett Reef Lighted Bell Buoy ''4'' (LLNR 21065) in approximate position 41°15′38″ N, 072°08′22″ W (NAD 1983), then south to Bartlett Reef Lighted Buoy ''1'' (LLNR 21065) in approximate position 41°16′28″ N, 072°07′54″ W (NAD 1983), then to an area located, bearing 192°T, approximately 325 yards from Rapid Rock Buoy ''R'' (LLNR 21770) 41°17′07″ N, 072°06′09″ W (NAD 1983), then to position 41°18′04″ N, 072°04′50″ W, (NAD 1983), which meets the west side of the Federal Channel, then along the west side of the Federal Channel to the Thames River Railroad Bridge in the Port of New London, in the position 41°21′46″ N, 072°05′23″ W (NAD 1983). This safety zone will be used for the parade route of Tall Ships from 7:30 a.m., on July 12, 2000, until 5 p.m., on July 12, 2000.

(b) No vessel may transit within Safety Zone 1 or 2 without the express authorization of the Coast Guard Captain of the Port, Long Island Sound, or his on-scene representative. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. (c) This section is effective from 7:30 a.m. on July 12, 2000 until 5 p.m. on July 12, 2000.

Dated: March 15, 2000.

Robert F. Duncan,

Captain, U.S. Coast GuardActing Commander, First Coast Guard District, Boston, Massachusetts.

[FR Doc. 00–7468 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD05–00–002]

RIN 2115–AA97, AA98

OPSAIL 2000, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in the Delaware River, Philadelphia, Pennsylvania for OPSAIL 2000 activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2000 events. This action will restrict vessel traffic in the Delaware River between Anchorage 9 (Mantua Creek anchorage) and the Benjamin Franklin Bridge.

DATES: Comments and related material must reach the Coast Guard on or before May 12, 2000.

ADDRESSES: You may mail comments and related material to the Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, One Washington Ave., Philadelphia, Pennsylvania 19147 or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8:30 a.m. and 2:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Kirsten Codel, Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–00–002), indicate the specific section of this document to which each comment

applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this regulation is 45 days. This time period is adequate to allow local input because the event is highly publicized and the shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia, One Washington Ave., Philadelphia, Pennsylvania 19147, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Philadelphia OPSAIL 2000, Inc., is sponsoring OPSAIL 2000 activities in the Delaware River, Philadelphia, Pennsylvania. Planned events include the arrival of a number of international Tall Ships at Anchorage 9 (Mantua Creek anchorage) on June 22, 2000 and a Parade of Sail from that anchorage, upriver to the Benjamin Franklin Bridge on June 23, 2000.

The Coast Guard anticipates a large spectator fleet for this event. Operators should expect significant vessel congestion along the parade route.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public immediately prior to, during, and after the scheduled events. The regulations will establish a clear parade route for the OPSAIL 2000 vessels, provide a safety buffer around the participating vessels while they are at anchor and in transit, and in certain anchorage areas, modify existing anchorage regulations for the benefit of participants and spectators. The regulations will affect the movement of all vessels operating in the specified areas of the Delaware River.

It may be necessary for the Coast Guard to establish safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term ''passenger for hire'' is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term ''passenger'' is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Philadelphia area for this event obtain an up to date edition of National Ocean Service Chart 12313 to avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2000 and spectator vessels in the Philadelphia area for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Discussion of Proposed Rule

The OPSAIL 2000 vessels are scheduled to arrive at Anchorage 9 (Mantua Creek anchorage) on June 22, 2000. The lead vessel is scheduled to begin the Parade of Sail at 9 a.m. on June 23, 2000, and will follow a parade route of approximately 8 nautical miles from that anchorage, upriver to the Benjamin Franklin Bridge. Two larger OPSAIL 2000 vessels which are unable to sail under the Walt Whitman Bridge will depart the Parade of Sail in the vicinity of the Schuylkill River and be berthed at the Philadelphia Naval Shipyard. The remainder of the OPSAIL 2000 vessels will be berthed along the Philadelphia, PA and Camden, NJ waterfronts as they complete the Parade of Sail.

The safety of parade participants and spectators will require that spectator craft be kept at a safe distance from the parade route during these vessel movements. The Coast Guard proposes using safety zones along the parade route to keep all vessels not involved in the Parade of Sail a safe distance from the OPSAIL 2000 vessels. The parade route has been segmented in this rulemaking to facilitate the earliest possible reopening of the waterway once all OPSAIL 2000 vessels have cleared a particular segment of the route, but portions of the Delaware River will remain closed to all traffic until all of the OPSAIL 2000 vessels are safely moored at their assigned berths or have departed the event area.

The Coast Guard also intends to temporarily modify the existing anchorage regulations found at 33 CFR 110.157 to accommodate OPSAIL 2000 and spectator vessels. Anchorage 9 will be closed to all vessels except OPSAIL 2000 vessels that will be using it as the staging area for the Parade of Sail. Vessels will not be allowed to anchor in Anchorage 10 and Anchorage 11 to enable spectator vessels to safely follow the Parade of Sail. The southern portion of Anchorage 13, and the northern portion of Anchorage 12 will be closed because they are in the portion of the river that the OPSAIL 2000 vessels will be using to maneuver in preparation of mooring. The southern portion of Anchorage 12 will be designated exclusively for spectator vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not

reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Parade of Sail on June 23, 2000. Although these regulations prevent traffic from transiting portions of the Delaware River during the event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or anchor in portions of the Delaware River in the vicinity of Philadelphia, Pennsylvania. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: The restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (junior grade) Kirsten Codel, Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C; this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.** By controlling vessel traffic during these events, this proposed rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 110 and 165 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 8 a.m. on June 22, 2000 until 4 p.m. on June 23, 2000 § 110.157 is amended by adding paragraph (d) to read as follows:

§ 110.157 Delaware Bay and River

* * * * *

(d) Not withstanding paragraphs (a) through (c) of this section, the following temporary regulations are in effect from 8 a.m. on June 22, 2000 until 4 p.m. on June 23, 2000 for OPSAIL 2000.

(1) Anchorage 9 will be closed to all vessels except OPSAIL 2000 vessels. ''OPSAIL 2000 vessels'' includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Philadelphia and approved by the Commander, Fifth Coast Guard District.

(2) No vessel may anchor in Anchorage 10, or Anchorage 13 south of

the Benjamin Franklin Bridge, without permission of the Captain of the Port.

(3) No vessel may anchor in Anchorage 11 after 1 a.m. on June 23, 2000 without permission of the Captain of the Port.

(4) Anchorage 12:

(i) No vessel may anchor north of latitude 39° 55′41″ N without permission of the Captain of the Port.

(ii) South of latitude 39° 55′41″ N is designated for the exclusive use of spectator vessels. ''Spectator vessels'' includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Philadelphia to observe part or all of the events attendant to OPSAIL 2000.

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

4. Add temporary § 165.T05–002 to read as follows:

§ 165.T05–002 Safety Zone; OPSAIL 2000, Delaware River, Philadelphia, PA.

(a) Definitions. (1) *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia.

(3) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Philadelphia and approved by Commander, Fifth Coast Guard District.

(b) *Location.* The following areas are Safety Zones:

(1) *Parade of Sail—First Segment:* This moving safety zone includes all waters from 500 yards forward of the lead OPSAIL 2000 vessel to 100 yards aft of the last OPSAIL 2000 vessel, and extending 50 yards outboard of each OPSAIL 2000 vessel participating in the Parade of Sail. This safety zone will move with the Parade of Sail as it transits the Delaware River from Anchorage 9 (Mantua Creek anchorage) to the Walt Whitman Bridge.

(2) *Parade of Sail—Second Segment:* All waters of the Delaware River, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and on the north by the Benjamin Franklin Bridge with the exception of the southern portion of Anchorage 12, defined as that portion of the anchorage south of latitude 39° 55′41″ N.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within these regulated areas unless authorized to do so by the Coast Guard Patrol Commander. Any person or vessel authorized to enter the regulated area must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Coast Guard Patrol Commander so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(4) The Coast Guard Patrol Commander will notify the public of changes in the status of these zones by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* This section is effective from 8 a.m. to 4 p.m. on June 23, 2000.

Dated: March 10, 2000.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 00–7467 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–6567–1]

Notice of Availability for Draft Guidance Document on BACT and LAER for Tier2/Gasoline Sulfur Refinery Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is making available for public review and comment a preliminary draft of its pending guidance on BACT and LAER for Tier 2/gasoline sulfur refinery projects.

On February 10, 2000, EPA issued new emissions standards (''Tier 2 standards'') for all passenger vehicles, including sport utility vehicles, minivans, vans and pick-up trucks. To ensure the effectiveness of low emission control technologies in these vehicles, this rule also sets new standards to significantly reduce the sulfur content in gasoline. In order to meet these sulfur in gasoline requirements, many refiners will have to make modifications to their existing facilities, which could be subject to the major new source review (NSR) preconstruction permitting requirements under parts C and D of the Clean Air Act. The refiners subject to major NSR will be required to undergo a pollution control technology evaluation to apply either best available control technology (BACT) or lowest achievable emission rate (LAER), depending on the applicable program requirements. To provide greater certainty and to expedite the NSR permitting process for refinery projects undertaken to comply with the recently issued gasoline sulfur standards, EPA intends to provide Federal guidance on BACT and LAER for these type of projects.

A draft of EPA's guidance and a supporting background document on BACT and LAER for certain refinery construction projects undertaken to comply with the new gasoline sulfur standards is available for public review and comment. The EPA does not intend to respond to individual comments, but rather to consider comments and information from the public in the preparation of a final guidance document.

DATES: The comment period on the draft guidance will close on April 27, 2000.

ADDRESSES: Comments should be sent to Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–0641, telefax 919–541–5509 or E-mail *smith.pam@epa.gov.*

FOR FURTHER INFORMATION CONTACT: David Solomon, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541-5375, telefax 919–541–5509 or E-mail *solomon.david@epa.gov.*

SUPPLEMENTARY INFORMATION: A copy of the draft guidance document and a supporting technical background document may be obtained by calling or E-mailing Pamela J. Smith. The draft guidance may also be downloaded from the NSR Website *http://www.epa.gov/ttn/nsr* under the topic ''What's New on NSR.''

Dated: March 17, 2000.

Jeffrey Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–7718 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN193–1b; FRL–6566–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Indiana; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Indiana State Plan submittal for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State submitted this plan to EPA in accordance with requirements found in the Clean Air Act (Act) and the requirements for State plans for designated facilities in 40 CFR part 60, subpart B. The submittal establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. The EPA proposes to find that Indiana's Plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans. EPA's proposed approval of the State's MSW Landfill Plan also includes rules submitted to EPA on November 21, 1995, and February 14, 1996, as volatile organic compound control measures. EPA approved the incorporation of these rules into the Indiana SIP on January 17, 1997. In this action, EPA is proposing to include these rules as part of the Indiana MSW Landfill Plan.

DATES: Written comments must be received on or before April 27, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever ''we,'' ''us'' or ''our'' are used we mean EPA.

Table of Contents

I. What Action Is EPA Taking Today?

We have examined the State's 111(d) revision request and the supporting documentation provided by the State. Based on the merits of the information supplied, EPA is proposing to approve Indiana's 111(d) plan for control of landfill gas from existing MSW landfills which was submitted to EPA on September 30, 1999. EPA is also proposing to add rules for controlling volatile organic compound emissions from existing MSW landfills located in Clark, Floyd, Lake and Porter Counties to the State's 111(d) plan. These rules, contained in 326 IAC 8–8, were originally submitted to EPA as part of the Indiana Ozone Plan on November 21, 1995 and February 14, 1996. EPA approved the incorporation of these rules into the Ozone Plan on January 17, 1997 (62 FR 2593). EPA codified its approval of these State rules at 40 CFR 52.770(c)(110).

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: March 17, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–7622 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket #ID–02–0001; FRL–6566–3]

Approval and Promulgation of Municipal Solid Waste Landfills State Plan for Designated Facilities and Pollutants: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State of Idaho's section 111(d) State Plan for controlling emissions from existing Municipal Solid Waste (MSW) Landfills. The plan was submitted on December 16, 1999, to fulfill the requirements of section 111(d) of the Clean Air Act. The State Plan adopts and implements the Emissions Guidelines applicable to existing MSW Landfills, and establishes emission limits and controls for sources which commenced construction, reconstruction, or modification before May 30, 1991.

In the final rules section of this **Federal Register,** the EPA is approving Idaho's State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, EPA will not take action on this proposed rule. If the EPA receives relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will then address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Written comments must be received by April 27, 2000.

ADDRESSES: Written comments should be addressed to: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101. Copies of the State submittal are available for public review during normal business hours at the following locations. Persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.

Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID

83720 (Contact Tim Teater at 208–373–0457 for an appointment at IDEQ).

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), US EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: For additional information see the direct final action which is published in the Rules section of this **Federal Register**.

Dated: March 14, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 00–7620 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–540; MM Docket No. 99–298; RM–9714]

Radio Broadcasting Services; St. James and Fairmont, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document dismisses a petition for rule making filed by Minnesota Valley Broadcasting Company, Inc. requesting the reallotment of Channel 263C2 from St. James, Minnesota, to Fairmont, Minnesota, and modification of the license for Station KXAC to specify operation at Fairmont. *See* 64 FR 56724, October 21, 1999. Minnesota Valley Broadcasting Company, Inc. withdrew its interest in the allotment of Channel 263C2 at Fairmont, Minnesota. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–298, adopted March 6, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7601 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF ARICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempted from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112 June 24, 1983).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2000 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** on February 15, 2000 at 65 FR 7555. The guidelines published by DHHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced price school meals or identical to State or local guidelines for free or reduced price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2000 through June 30, 2001. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, but in no case may implementation take place later than July 1, 2000. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2000. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

BILLING CODE 3410–30–U

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2000 to June 30, 2001)

Household Size	Federal Poverty Guidelines- 100%					Reduced Price Meals - 185%				
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	8,350	696	348	322	161	15,448	1,288	644	595	298
2	11,250	938	469	433	217	20,813	1,735	868	801	401
3	14,150	1180	590	545	273	26,178	2,182	1,091	1,007	504
4	17,050	1421	711	656	328	31,543	2,629	1,315	1,214	607
5	19,950	1663	832	768	384	36,908	3,076	1,538	1,420	710
6	22,850	1905	953	879	440	42,273	3,523	1,762	1,626	813
7	25,750	2146	1073	991	496	47,638	3,970	1,985	1,833	917
8	28,650	2388	1194	1102	551	53,003	4,417	2,209	2,039	1,020
Each Add'l Member Add	+2,900	+242	+121	+112	+56	+5,365	+448	+224	+207	+104
Alaska										
1	10,430	870	435	402	201	19,296	1,608	804	743	372
2	14,060	1,172	586	541	271	26,011	2,168	1,084	1,001	501
3	17,690	1,475	738	681	341	32,727	2,728	1,364	1,259	630
4	21,320	1,777	889	820	410	39,442	3,287	1,644	1,517	759
5	24,950	2,080	1040	960	480	46,158	3,847	1,924	1,776	888
6	28,580	2,382	1191	1100	550	52,873	4,407	2,204	2,034	1,017
7	32,210	2,685	1343	1239	620	59,589	4,966	2,483	2,292	1,146
8	35,840	2,987	1494	1379	690	66,304	5,526	2,763	2,551	1,276
Each Add'l Member Add	+3,630	+303	+152	+140	+70	+6,716	+560	+280	+259	+130
Hawaii										
1	9,590	800	400	369	185	17,742	1,479	740	683	342
2	12,930	1,078	539	498	249	23,921	1,994	997	921	461
3	16,270	1,356	678	626	313	30,100	2,509	1,255	1,158	579
4	19,610	1,635	818	755	378	36,279	3,024	1,512	1,396	698
5	22,950	1,913	957	883	442	42,458	3,539	1,770	1,633	817
6	26,290	2,191	1096	1012	506	48,637	4,054	2,027	1,871	936
7	29,630	2,470	1235	1140	570	54,816	4,568	2,284	2,109	1,055
8	32,970	2,748	1374	1269	635	60,995	5,083	2,542	2,346	1,173
Each Add'l Member Add	+3,340	+279	+140	+129	+65	+6,179	+515	+258	+238	+119

Authority: 42 U.S.C. 1786.

Dated: March 21, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–7547 Filed 3–27–00; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Land and Resource Management Plan Amendments for Canada Lynx in Colorado and Southern Wyoming

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with amendments to land and resource management plans for the Routt National Forest; Arapaho and Roosevelt National Forests; Pike and San Isabel National Forests; the San Juan National Forest; Grand Mesa, Uncompahgre and Gunnison National Forests; and the Rio Grande National Forest located in the State of Colorado; and the Medicine Bow National Forest located in the State of Wyoming.

SUMMARY: Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement in conjunction with the amendments of Land and Resource Management Plans (hereafter referred to as Forest Plans or Plans) for the National Forests listed above. The White River National Forest is not included in this proposed action because this unit will include lynx management direction in its final revised forest plan scheduled to be completed in May 2001.

On the basis of new information regarding lynx biology developed since the issuance of the plans mentioned above, the Forest Service has identified a need to update management direction. This notice described a proposal to change Forest Plans to the extent necessary to respond to recommendations in the Canada Lynx Conservation Assessment and Strategy (LCAS) and other new information regarding the Canada lynx and its habitat.

DATES: Comments concerning the scope of the analysis should be postmarked by May 11, 2000. The agency expects to file a draft environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public, agency, and tribal government comment in the summer of 2000. A final environmental impact statement is expected to be filed in early 2001.

ADDRESSES: Send written comments to: Howard Sargent, Team Leader, Lynx Plan Amendment Team, USDA Forest Service, Rocky Mountain Region, PO Box 25127, Lakewood, Colorado, 80225–0127.

FOR FURTHER INFORMATION CONTACT: Howard Sargent, Team Leader, (970) 498–1201.

RESPONSIBLE OFFICIAL: Lyle Laverty, Rocky Mountain Regional Forester, P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: The Regional Forester gives notice that the Rocky Mountain Region of the USDA Forest Service is beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision. The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies who are interested in or may be affected by the proposed action (36 CFR 219.6). The public is invited to help identify issues and define the range of alternatives to be considered in the enviromental impact statement. The range of alternatives to be considered in the DEIS will be based on issues and specific decisions to be made. Written comments identifying issues for analysis and the range of alternatives are encouraged.

Proposed Action

The proposed action is to amend Forest Plans for the units listed previously in this notice to, as necessary, establish or revise goals, standards, and guidelines that respond to recommendations contained in the LCAS and other new information regarding the lynx and its habitat. The decision to be made is how to amend the Forest Plans to incorporate direction that responds to the LCAS recommendations and other new information regarding the lynx, if at all. Attachment 1 displays the key LCAS recommendations phrased in terms of goals, standards, and guidelines that will be considered as part of the environmental analysis process. Note that existing Forest Plans may already contain some direction that is essentially the same as the LCAS recommendations. Each plan will be amended only to the extent necessary to appropriately respond to the LCAS recommendations and other new information.

A range of alternatives that respond to issues developed during scoping will be considered when amending the Forest Plans. A reasonable range of alternatives will be evaluated and reasons will be given for eliminating some alternatives from detailed study, if that occurs. A ''no-action alternative'' is required, meaning that Forest Plans would not be amended.

Purpose and Need

The purpose and need for this proposal is to establish Forest Plan management direction designed to respond to the recommendations in the LCAS and other new information concerning the lynx and its habitat. This proposal is limited to the National Forests in the Rocky Mountain Region and Southern Rocky Mountain Geographic Area that have lynx habitat (see list above).

The Secretary of Interior listed the Canada lynx as a threatened species on March 24, 2000. This decision will take effect 30 days after publication. A key finding of the listing decision is that ''the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans'' (Department of the Interior, Fish and Wildlife Service, 50 CFR Part 17, Determination of Threatened Status for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Related Rule, p. 147) has contributed to the species' decline. When a species is listed, Section 7(a)(2) of the Endangered Species Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat.

This action is also needed to assure that land and resource management plans are in compliance with species viability requirements in the planning regulations that implement the National Forest Management Act. The Rocky Mountain Region has identified the lynx as a sensitive species, it is listed by the State of Colorado as an endangered species, and the State of Wyoming lists the lynx as a ''protected animal'', meaning it is protected from take.

A large amount of new information about the lynx has become available in the past two years. Key elements of this new information to be considered include: (1) The LCAS; (2) a compendium and interpretation of current scientific knowledge in ''Ecology and Conservation of Lynx in the United States, published in October 1999; (3) the Canada Lynx Conservation Agreement, prepared in February 2000

and signed by the Forest Service Regional Foresters and Fish and Wildlife Service Regional Directors responsible for the geographic areas within the range of the lynx in the conterminous United States; (4) the release of lynx in Colorado by the Colorado Division of Wildlife; and (5) the decision by the U.S. Fish and Wildlife Service, announced on March 24, 2000, to list the lynx as a threatened species in the conterminous United States, under the provisions of the Endangered Species Act. This information has provided a better understanding of the lynx, its prey base and habitat requirements, particularly the forest communities it uses and the ecology of those forests, and risk factors affecting lynx productivity, mortality, and movements. Forest Plans in the Region were largely developed before issues regarding the lynx were identified and without the benefit of the new information on the lynx and its habitat.

Public Participation

Public participation will be solicited with news releases or by notifying people in person or by mail. The first formal opportunity to comment is during the scoping process (40 CFR 1501.7) which begins with the issuance of this notice of intent. All comments, including the names and addresses when provided, are placed in the record and are available for public inspection and copying at the Forest Service Regional Office. Persons wishing to inspect the comments are encouraged to call ahead (303–275–5103) to facilitate entrance into the building.

The Forest Service will work with tribal governments to address issues concerning Indian tribal self-government and sovereignty, natural and cultural resources held in trust, Indian tribal treaty and Executive order rights, and any issues that significantly or uniquely affect their communities.

Preliminary Issues

Some preliminary issues have already been identified and are listed below. These issues apply only to National Forest system lands on the units listed previously in this notice.

- The adoption of new Forest Plan goals, standards and guidelines is expected to maintain or enhance habitat conditions for the lynx on National Forest lands. Project implementation is expected to facilitate the development of landscape and site characteristics suitable for lynx and its principal prey, the snowshoe hare.
- The adoption of new Forest Plan goals, standards and guidelines may affect the areas where winter and summer recreation take place and how and when these activities are conducted. Activities like cross country skiing, snowmobiling, off-road vehicle use and developed recreation facilities could be affected. New direction could also affect ski area operations and expansions.
- The adoption of new Forest Plan goals, standards and guidelines may affect the ability to use roads and trails, the construction of roads and trails and the closure or decommissioning of roads and trails. This potentially influences activities like recreational use, oil and gas leasing, mineral development or other uses associated with Forest Service roads and trails.
- The adoption of new Forest Plan goals, standards and guidelines may affect timber harvest practices in order to protect lynx denning sites and foraging areas or to minimize disturbance in key habitat linkage areas. New plan direction may also affect the type of harvest or the timing of harvest in order to preserve or enhance the habitat of the snowshoe hare, a key prey species.
- The adoption of new Forest Plan goals, standards and guidelines may affect livestock grazing by requiring that vegetation conditions be maintained to support lynx prey species.

The Forest Service, Rocky Mountain Region is the lead agency. No joint lead agencies have been identified at this time. The Forest Service will continue to cooperate with other federal and state agencies as this action proceeds. There are no permits or licenses required to implement the proposed action.

Release and Review of the EIS

The Forest Service expects the DEIS to be filed with the Environmental Protection Agency (EPA) and to be available for public, agency, and tribal government comment in the summer of 2000. At that time, the EPA will publish a notice of availability for the DEIS in the Federal Register. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, potential reviewers of the DEIS must participate in the environmental review of the proposal, including this initial scoping period, in such a way that their participation is meaningful and alerts an agency to the reviewers's position and contentions; Vermont Yankee Nuclear Power Corp. v. NRDC [435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the final environmental impact statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc., v. Harris, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate throughout the process, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns relating to the proposed actions, comments on the DEIS, when it become available, should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3. After the comment period on the DEIS ends, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in early 2001. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations and policies in making decisions regarding these amendments. The responsible official will document the decisions and reasons for the decisions in a Record of Decision. The decision will be subject to appeal in accordance with 36 CFR 215 or in accordance with 36 CFR 217 depending on whether the amendments are significant under the National Forest Management Act requirements at 36 CFR 219.10(f).

Dated: March 22, 2000.

David A. Heerwagen,

Deputy Regional Forester, Rocky Mountain Region, USDA Forest Service.

Attachment 1—Key Recommendations of the LCAS, Phrased in Terms of Potential Goals, Standards, and Guidelines

Goals, Standards, and Guidelines

The goals, standards, and guidelines generally apply only to lynx habitat within a Lynx Analysis Unit. Lynx habitat occurs in mesic coniferous forests that have cold, snowy winters and provide a prey base of snowshoe hare. Lynx habitat is a mosiac within the Englemann spruce, subalpine fir, lodgepole pine, aspen, mesic Douglas-fir and mesic white fir forested landscapes, generally between 8,000 and 12,000 feet. High elevation sagebrush and mountain shrub communities found adjacent to or intermixed with the forest communities may be potentially important as habitat for alternative prey species. Ponderosa pine is generally not considered lynx habitat.

Category: Physical

Water and Aquatic Resources—Riparian Areas and Wetlands

Standard: Refer to: Range, standard #1.

Category: Biological

Range

Goals: 1. Manage grazing to maintain or move toward the composition and structure of native plant communities within lynx habitat and adjacent shrub-steppe habitats.

Standards: 1. Within lynx habitat, manage livestock grazing in riparian areas and willow carrs to maintain or achieve mid-seral or later condition to provide cover and forage for lynx prey species.

2. Delay livestock use in post-fire and post-harvest created openings until successful regeneration of the shrub and tree components occurs.

Guidelines: 1. Ensure that ungulate grazing does not impede the development of snowshoe hare habitat in natural or created openings within lynx habitat.

2. Manage grazing in aspen stands to ensure sprouting and sprout survival sufficient to perpetuate the long-term viability of the clones.

3. Maintain or achieve mid-seral or higher condition in shrub-steppe habitat that is within the elevational range of forested lynx habitat or that provides landscape connectivity between blocks of primary lynx habitat.

Silviculture

Goals: 1. Design regeneration harvest, planting, and thinning to develop characteristics suitable for lynx and snowshoe hare habitat.

2. Maintain suitable acres of lynx habitat and juxtaposition of habitat through time when planning timber sales and related activities.

Standards: 1. Pre-commercial thinning will be allowed only when stands no longer provide snowshoe hare habitat (*e.g.,* self-pruning processes have eliminated snowshoe hare cover and forage availability during winter conditions with average snowpack).

2. In aspen stands within lynx habitat, favor regeneration of aspen.

3. Following a disturbance such as blowdown, fires, insects, and disease, where lynx denning habitat is less than 10% of a Lynx Analysis Unit, do not salvage harvest when the affected area is smaller than 5 acres if it could continue to lynx denning habitat. (Exceptions are developed recreation sites or other sites of high human concentration.) Where larger areas are affected, retain a minimum of 10% of the affected area per Lynx Analysis Unit in patches of at least 5 acres to provide future denning habitat. In such areas, defer or modify management activities that would prevent development or maintenance of lynx foraging habitat.

Also refer to:

- Threatened, Endangered, and Sensitive Species, Lynx Analysis Units, standards 1 and 2.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, standard #1.
- Travelways, standard #1.

Guidelines: 1. Management activities retain adequate amounts of coarse woody debris for lynx and snowshoe hare cover, if it exists on site.

2. Commercial thinning projects shall maintain or enhance lynx habitat.

3. Design vegetation management activities that consider retaining or encouraging tree species composition and structure that will provide habitat for red squirrels or other lynx alternate prey species.

Also refer to:

- Range, guideline #2.
- Threatened, Endangered, Sensitive Species, Denning and Foraging Habitat, guideline #1.
- Fire, guidelines 4 and 7.

Threatened, Endangered, and Sensitive Species

Lynx Analysis Units

Goals: 1. Maintain effectiveness of lynx habitat. (Effectiveness is primarily affected by high level of human use.)

Standards: 1. If more than 30% of the lynx habitat in a Lynx Analysis Unit (LAU) is currently in unsuitable condition, no further reduction of suitable habitat shall occur as a result of vegetation management activities.

2. Vegetation management shall not change more than 15 percent of lynx habitat within a LAU to unsuitable condition within a 10-year period.

Denning and Foraging Habitat

Goal: 1. Provide a landscape with interconnected blocks of high quality foraging and denning habitat that allows lynx movement between these habitats.

Standard: 1. Within a Lynx Analysis Unit, maintain denning habitat on at least 10% of the area that is capable of producing stands with characteristics suitable for denning habitat. Denning habitat should be well distributed, in patches generally larger than 5 acres. This applies to vegetation treatment, timber harvest, prescribed fire, fire suppression actions, and other similar activities.

Guidelines: 1. In areas where future denning habitat is desired, or to extend the production of snowshoe hare foraging habitat where forage quality and quantity is declining due to plant succession, consider improvement of habitat through activities such as commercial thinning and selection harvesting. Use harvesting and thinning to retain and recruit understories of small diameter conifers and shrubs preferred by hares and to retain and recruit coarse woody debris.

2. Maintain or improve the juxtaposition of denning to foraging habitat. This can be important in large wildfire events in late seral.

3. Design vegetation and fire management activities to retain or restore lynx denning habitat on landscapes with the highest probability of escaping stand-replacing fire events.

Connectivity and Fragmentation

Goals: 1. Maintain and, where necessary and feasible, restore lynx habitat connectivity across forested landscapes and within and between Lynx Analysis Units. Facilitate wildlife movement within key linkage areas considering highway crossing structures when feasible.

2. Within Lynx Analysis Units that have been fragmented by past management activities that reduced the quality of lynx habitat, management practices will be implemented to move toward forest composition, structure and patterns more similar to those that would have occurred under historical conditions and natural disturbance processes.

Predation/Competition

Goal: 1. Avoid management practices that would increase competition with and predation on lynx.

Prey Species:

Goals: 1. Reduce incidental harm or capture of lynx during predator control activities and ensure retention of adequate prey base.

2. Retain and enhance existing habitat conditions for important lynx prey species and alternate prey species, such as the red squirrel.

Category: Disturbance Processes

Fire

Goal: 1. Restore fire as an ecological process through time and use fire as a tool to maintain, enhance, or restore lynx habitat.

Standards: Refer to:

- Silviculture, standard #3.
- Threatened, Endangered, and Sensitive Species, Lynx Analysis Units, standards 1 and 2.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, standard #1.

Guidelines: 1. Consider prescriptions that can result in regeneration and the creation of snowshoe hare habitat when developing burn prescriptions, especially for lodgepole pine and aspen.

2. Design burn prescriptions to promote response by shrub and tree species that are favored by snowshoe hare.

3. Consider the need for pre-treatment of fuels before conducting management ignitions.

4. In lynx habitat, avoid constructing permanent firebreaks on ridges or saddles.

5. Minimize construction of temporary roads and machine fire lines to the extent possible during fire suppression activities in lynx habitat.

6. In the event of a large wildlife in stands that were formally late seral, during the post-disturbance assessment prior to restoration or salvage harvesting, evaluate the potential for providing for lynx denning and foraging habitat.

Also refer to:

- Silviculture, guideline #3.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, guidelines 2 and 3.

Category: Social

Recreation—Developed Recreation

Standard: 1. Locate new or relocated trails, roads, and ski lift termini to direct winter use away from diurnal security habitat.

2. Protect key linkage areas when planning new or expanding recreational developments.

Guidelines: 1. Provide adequately sized coniferous inter-trail islands, including the retention of coarse woody material, to maintain snowshoe hare habitat when designing ski area expansions.

2. Identify and protect potential lynx security habitats in and around proposed developments or expansions.

3. Evaluate, and adjust as necessary, ski operations in expanded or newly developed areas to provide nocturnal foraging opportunities for lynx in a manner consistent with operational needs, especially in landscapes where lynx habitat occurs as narrow bands of coniferous forest across the mountain slopes.

Recreation—Dispersed Recreation

Standards: 1. Allow no net increase in groomed or designated over-the-snow routes and designated snowmobile play areas by Lynx Analysis Units unless the designation serves to consolidate unregulated use and improves lynx habitat. Winter logging activity would be an exception.

Guidelines: 1. Limit or discourage activities that result in snow compaction in areas where it is shown to compromise lynx habitat. Such actions should be undertaken on a priority basis considering habitat function and importance.

Also refer to: Travelways, guidelines 3 and 4.

Category: Administrative

Infrastructure—Travelways

Standard: 1. Close temporary roads constructed for timber sale activities in lynx habitat to public use during the winter.

Guidelines: 1. Design new roads that could impact lynx habitat, especially the entrance, for effective closure and subsequent decommissioning, if it meets overall management objectives.

2. Minimize roadside brushing on low speed, low volume roads in order to provide snowshoe hare habitat.

3. Locate trails and roads away from forested stringers to avoid fragmentation.

4. Minimize creation of permanent travelways on ridgetops and saddles that could facilitate increased access by lynx competitors in lynx habitat.

Real Estate—Land Adjustments

Goal: 1. Retain key wildlife linkage areas on National Forest System lands in public ownership. Cooperate with other ownerships to establish unified management direction via habitat conservation plans, conservation easement or agreements, and land acquisition.

Special Uses

Goal: 1. Design activities and facilities to minimize impacts on lynx habitat.

Standard: 1. Restrict authorized use under permits to designated routes when in lynx habitat on projects where over-snow access is required. Close newly constructed roads to public access during project activities. Upon project completion, evaluate the need to reclaim these roads.

Guideline: 1. Encourage remote monitoring of sites that are located in lynx habitat, so that they do not have to be visited daily.

Transportation and Utility Corridors

Goals: 1. Reduce the potential for lynx mortality related to highways.

2. Work cooperatively with the Federal Highway Administration and State Department of Transportation to address the movement needs of lynx.

Standard: Maintain connectivity of lynx habitat during the planning for highway right-of-ways, construction, reconstruction, and other possible transportation corridors.

Glossary

Fragmentation—Human alteration of natural landscape patterns, resulting in reduction of total area, increased isolation of patches, and reduced connectivity between patches of natural vegetation.

Highway—A road that is at least 2 lanes wide, paved with asphalt or concrete. Average daily traffic may exceed 5,000 vehicles and speeds are 45 mph or greater.

Key Linkage Areas—Critical areas for lynx habitat. Usually, the factors that place connectivity at risk are highways or private land developments. Special management emphasis is recommended to maintain or increase the permeability of key linkage areas.

Lynx Analysis Unit (LAU)—The LAU is a project analysis unit upon which direct, indirect, and cumulative effects analyses are performed. LAU boundaries should remain constant to facilitate planning and allow effective monitoring of habitat changes over time. An area of at least the size used by an individual lynx, about 25–50 square miles in contiguous habitat (should be larger in less contiguous, poorer quality, or naturally fragmented habitat.

Lynx Denning Habitat—Habitat used during parturition and rearing of young until they are mobile. The common component appears to be large amounts of coarse woody debris, either down logs or root wads. The coarse woody debris provides escape and thermal cover for kittens. Denning habitat may

be found either in older mature forest of conifer or mixed conifer/deciduous types, or in regenerating stands (greater than 20 years since disturbance). Denning habitat must be located within daily travel distance of foraging habitat.

Lynx Diurnal Security Habitat—In lynx habitat, areas that provide secure winter daytime bedding sites for lynx in highly disturbed landscapes, *e.g.*, large developed winter recreational sites or areas of concentrated winter recreational use. It is presumed that lynx may be able to adapt to the presence of regular and concentrated human use during winter, so long as other critical habitat needs are being met, and security habitat blocks are present and adequately distributed in such disturbed landscapes. Security habitat will provide lynx the ability to retreat from human disturbance during winter daytime hours, emerging at dusk to hunt when most human activity ceases. Security habitats will generally be sites that naturally discourage winter human activity because of extensive forest floor structure, or stand conditions that otherwise make human access difficult, and should be protected to the degree necessary. Security habitats are likely to be most effective if they are sufficiently large to provide effective visual and acoustic insulation from winter activity and to easily allow movement away from infrequent human intrusion. These winter habitats must be distributed such that they are in proximity to foraging habitat.

Lynx Forgaging Habitat—Habitat that supports primary prey (snowshoe hare) and/or important alternate prey (especially red squirrels) that are available to lynx. The highest quality snowshoe hare habitats are those that support a high density of young trees or shrubs (greater than 4,500 stems or branches per acre), tall enough to protrude above the snow. These conditions may occur in early successional stands following some type of disturbance, or in older forests with a substantial understory of shrubs and young conifer trees. Coarse wood debris, especially in early successional stages (created by harvest regeneration units and large fires), provides important cover for snowshoe hares and other prey. Red squirrel densities tend to be highest in mature cone-bearing forests with substantial quantities of coarse woody debris.

Lynx Habitat—Lynx occur in mesic coniferous forest that have cold, snowy winters and provide a prey base of snowshoe hare. Lynx records occur predominantly in lodgepole pine, subalpine fir, Engelmann spruce, and aspen vegetation cover types on subalpine fir habitat types in the western United States. Cool, moist Douglas-fir, grand fir, or western larch forest, where they are interspersed with subalpine forest, also provide habitat for lynx.

Primary Lynx Habitat—Habitat that must be present to support foraging, denning, and rearing of young (in the western U.S. primary habitat is lodgepole pine or subalpine fir habitat types).

Secondary Lynx Habitat—Other vegetation types, when intermingled with or immediately adjacent to primary habitat, that contribute to lynx annual needs (cool/moist Douglas-fir habitat types adjacent to primary habitat).

Unsuitable Habitat Condition—An area that is capable of producing lynx foraging or denning habitat, but which currently does not have the necessary vegetation composition, structure, and/or density to support lynx and snowshoe hare populations during all seasons. For example, during the winter, vegetation must provide dense cover that extends above (greater than 6 feet) the average snow depth. Timber harvest, salvage harvest, commercial thinning, and prescribed fire may or may not result in unsuitable habitat conditions.

Snowshoe Hare Habitat—See foraging habitat.

[FR Doc. 00–7549 Filed 3–27–00; 8:45 am]
BILLING CODE 3410–81–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee; Notice of Meeting

SUMMARY: The Deschutes PIEC Advisory Committee will meet on April 12–13, 2000 at the Hood River Hotel at 102 Oak Avenue, Hood River, Oregon. The first day will be a field trip starting at 10:00 a.m. to visit restoration projects in the northern part of the Province. The second day will be a business meeting that will begin at 8:30 a.m. and finish at 3:30 p.m. Agenda items will include Wilderness Issues on the Mt. Hood, Interior Columbia Basin Ecosystem Management Project Briefing and Comment Process, Working Group/Subcommittee Updates, Info Sharing Around the Province and a Public Forum from 3:00 p.m. till 3:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd, Bend, OR, 97701, Phone (541) 383–4769.

Dated: March 21, 2000.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 00–7548 Filed 3–27–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oregon

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed change in Section IV of the FOTG of the NRCS in Oregon for review and comment.

SUMMARY: It is the intention of NRCS in Oregon to issue a revision to Conservation Practice Standard 580, Streambank and Shoreline Protection, in Section IV of the State Technical Guide in Oregon. This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received until April 27, 2000. Once the review and comment period is over and the standard is finalized, it will be placed in the individual Field Office Technical Guide in each field office.

ADDRESSES: Address all requests and comments to Bob Graham, State Conservationist, Natural Resources Conservation Service (NRCS), 101 SW Main Street, Suite 1300, Portland, Oregon 97204. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to *dave.dishman@or.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Bob Graham, 503–414–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oregon will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of changes

will be made. In Oregon, ''technical guides'' refers to the Field Office Technical Guide maintained at each NRCS Field Office in Oregon.

Dated: March 21, 2000.

Bob Graham,

State Conservationist, Portland, Oregon.

[FR Doc. 00–7609 Filed 3–27–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.022800B]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic-Reflection Data Collection in Southern California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Geological Survey (USGS) for an authorization to take small numbers of marine mammals by harassment incidental to collecting marine seismic-reflection data in southern California waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the USGS to incidentally take, by harassment, small numbers of marine mammals in the afore- mentioned area for a 3-week period between May and July 2000.

DATES: Comments and information must be received no later than April 27, 2000.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, or Christina Fahy, NMFS, 562–960–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 24, 2000, NMFS received a request from the USGS for authorization to take small numbers of several species of marine mammals by harassment incidental to collecting marine seismic-reflection data from waters off southern California. Seismic data will be collected during a 3-week period between May and July 2000, preferably June, to determine the source of the invasion of seawater into freshwater aquifers that are critical to the Los Angeles-San Pedro area water supply and to support studies of the regional landslide and earthquake hazards for people within the coastal cities between Santa Barbara and San Diego.

Background

The USGS proposes to conduct a high-resolution seismic survey offshore from Southern California. For a 3-week period between May and July 1999, preferably in June, the USGS would like to collect seismic-reflection data to investigate: (1) the intrusion of seawater into freshwater coastal aquifers that are critical to the water supply for people within the Los Angeles- San Pedro area and (2) the hazards posed by landslides, tsunamis, and potential earthquake faults in the nearshore region from Santa Barbara to San Diego. Both of these tasks are multi-year efforts that require high-resolution, seismic-reflection data using a minisparker acoustic source.

Coastal Southern California is the most highly populated urban area along the U.S. Pacific coast with 30 percent of the California population (approximately 10 million people) living in Los Angeles County alone. The primary objectives of the USGS research are to provide information (1) to understand and help mitigate the intrusion of salt water into coastal aquifer systems resulting from ground-water overdraft and (2) to help mitigate the earthquake threat to this area. Data collected to address the salt water intrusion objective will be used to develop a hydrogeologic model for the region. This model will assist water managers (Water Replenishment District of Southern California and the Los Angeles County Department of Public Works) provide a safe and uncontaminated ground-water supply to the local population.

Important geologic information that the USGS will derive from this project's seismic-reflection data concerns how earthquake deformation is distributed offshore; that is, where the active faults are and what the history of movement along them has been. This should improve understanding of the shifting pattern of deformation that occurred over both the long term (approximately the last 100,000 years) and short term (the last few thousand years). The USGS seeks to identify actively deforming structures that may constitute significant earthquake threats. The USGS also proposes to locate offshore landslides that might affect coastal areas. Not only major subsea landslides might affect the footings of coastal buildings, but also very large slides can

generate local tsunamis. These large sea waves can be generated by seafloor movement that is produced either by landslides or by earthquakes. Knowing where large slides have occurred offshore will help locate areas susceptible to wave inundation.

Some faults that have produced earthquakes lie entirely offshore or extend into offshore areas where they can be studied using high-resolution seismic-reflection techniques. An example is the Rose Canyon fault, which extends through the San Diego area, and is considered to be the primary earthquake threat. This fault extends northward from La Jolla, beneath the inner continental shelf, and appears again onshore in the Los Angeles area. This fault and others like it near shore could generate moderate (M5–6) to large (M6–7) earthquakes.

Knowing the location and geometry of fault systems is critical to estimating the location and severity of ground shaking. Therefore, the results of this project will contribute to decisions involving land use, hazard zonation, insurance premiums, and building codes.

The USGS emphasizes that the goal is not to predict earthquakes but rather to help determine what steps might be taken to minimize the devastation should a large earthquake occur. The regional earthquake threat is known to be high, and a major earthquake could adversely affect the well-being of a large number of people. In one example, earthquakes in the coastal ocean off southern California commonly result in large-scale submarine landslides, many of which could be capable of producing destructive tsunamis.

The proposed work is in collaboration with scientists at the Southern California Earthquake Center, which analyzes faults and earthquakes in onshore regions, and with scientists at the Scripps Institute of Oceanography, who measure strain (incremental movement) on offshore faults.

The USGS also wants to collect high-resolution seismic-reflection data to locate the sources and pathways of seawater that intrudes into freshwater aquifers below San Pedro. Ground water usage in the Los Angeles basin began in the mid-1800s. Today, more than 44,000 acre-feet of freshwater each year are extracted from the aquifers that underlie the West Coast Basin. Aggressive extraction of freshwater from coastal aquifers causes offshore salt water to flow toward areas of active pumping. To limit this salt-water intrusion, the Water Replenishment District and water purveyors in San Pedro are investing $2.7 million per year at the Dominguez Gap Barrier Project to inject freshwater underground to establish a zone of high water pressure in the aquifers near San Pedro and Long Beach. The resulting zone of high pressure forms a barrier between the invasive saltwater and the productive coastal aquifers.

USGS scientists in San Diego are working with the Los Angeles County Department of Public Works and the Water Replenishment District to develop a ground-water simulation model to predict fluid flow below San Pedro and nearby parts of the Los Angeles Basin. This model will eventually be used in managing water resources. The accuracy of the present model, however, is

compromised by a paucity of information about aquifer geometry and about other geologic factors that might affect fluid flow. Data collected by the USGS will be used to improve three-dimensional, fluid-flow models to aid management of water resources.

Proposed Field Work

Fieldwork described here will be the fourth geophysical survey on the west coast that the USGS has conducted under close supervision by marine-mammal biologists. In March 1998, the USGS used a large (6,500 in^3, 106 liters) airgun array in and around Puget Sound to study the regional earthquake hazard (see 63 FR 2213, January 14, 1998). The USGS employed 12 biologists, who worked on two ships continuously to oversee the seismic- reflection operations. On several occasions the USGS shut off the acoustic sources when marine mammals entered safety zones that had been stipulated by NMFS, and when mammals left these zones, the USGS gradually ramped-up the array as required in its permit to avoid harming wildlife. Marine-mammal biologists reported that during the survey, no overt distress was evident among the dense marine-mammal population, and afterward no unexplained marine-mammal strandings occurred.

In August 1998, the USGS surveyed offshore from southern California, using a small airgun (40 in^3, 0.65 liters). Two marine-mammal biologists oversaw this activity. In June 1999, the USGS conducted the third survey to support study of aquifer contamination and earthquake hazards in southern California (see 64 FR 31548, June 11, 1999). Three marine-mammal biologists provided oversight for this operation. The survey described in this document is proposed to be conducted with similar oversight.

Experimental Design

Marine studies conducted by the USGS focus where saltwater intrusion into coastal aquifers is an active concern and where other kinds of natural hazards have their greatest potential impact on society. In southern California, USGS studies will focus on five chief geographic areas. First is the San Pedro shelf, offshore of the Dominguez Gap barrier project. Collecting data as close to shore as feasible is critically important in order to merge onshore and offshore geology in a manner that allows modeling the hydrologic flow through the system. With respect to the seismic-hazard issues in the offshore, the USGS' main priority (and second geographic area) is the coastal zone and continental shelf between Long Beach and San Diego, where much of the hazard appears to be associated with strike-slip faults such as the Newport-Inglewood and Palos Verdes faults. A critical component of the survey concerns the third geographic area, which lies farther offshore in the Santa Monica, San Pedro, and San Diego Trough deeps, where rapid sedimentation has left a more complete record, relative to shallow-water areas, that can be used to decipher earthquake history. The fourth area is the extension into the Santa Barbara Channel of major elements of onshore geology that cross the northern part of Santa Monica Bay and include several major known earthquake faults. The fifth area is the geologic boundary, marked generally by the Channel Islands, between the inner California Borderland (dominated by strike-slip faults) and the Santa Barbara Channel (dominated by compressional faults). This change in fault types is important to study because the degree of earthquake threat varies with fault type. The study proposed herein focuses on the three highest priority areas, which lie near shore between Los Angeles and San Diego.

The seismic-reflection survey is planned to last 21 days. Based on experience collecting seismic-reflection data in this general area during 1998 and 1999, the USGS would prefer to conduct the 2000 survey in June. Because it will have to contract for a vessel from which to conduct the geophysical survey, the targeted study time frame is sometime within the May through July window. The basis for this decision is the USGS' desire to avoid the gray whale migrations and the peak arrival of other mysticetes during the later summer. An important part of the effort this summer will be to fill in gaps

caused by shutdowns and daylight-only operations during earlier surveys.

The USGS has not yet determined the exact tracklines for the survey, but it does know the areas where minisparker use will be concentrated (see Fig. 3 in the application). Within the overall work area, the objective is to collect seismic-reflection data along a grid of lines that are about 2 km (1.07 nmi) apart. Data collected during the 1998 and 1999 surveys will be used to guide the planning for the proposed survey in order to minimize the number of survey lines that are required to adequately define the aquifer geometries and location of potential earthquake faults.

The USGS proposes to use two seismic-reflection systems for data collection: (1) A 1.5 kilo-Joule (kJ) minisparker using a 200-m (656.2–ft) long multichannel streamer, and (2) a low-power, high resolution deep-tow system. The potential effect on marine mammals is from the minisparker; mammals cannot become entangled in the streamer. The low-powered, high-resolution seismic- reflection system, manufactured by Huntec, Ltd., will obtain detailed information about the very shallow geology. The seismic-reflection systems will be aboard a vessel owned by a private contractor or academic cooperator. Ship navigation will be accomplished using satellites of the Global Positioning System. The survey ship will be able to report accurate positions, which is important to mitigating the minisparker's effect on marine mammals and to analyzing what impact, if any, minisparker operation has on the environment.

The Seismic Sound Sources

The primary sound source to be used during this survey will be a 1.5 kJ sparker ''SQUID 2000'' minisparker system manufactured by Applied Acoustic Engineering, Inc. This minisparker includes eight electrodes that are mounted on a small pontoon sled. The electrodes simultaneously discharge electric current through the seawater to an electrical ground. This discharge creates an acoustic signal. The pontoon sled that supports the minisparker is towed on the sea surface, approximately 20 meters (65.6 ft) behind the ship.

Source characteristics of the SQUID 2000™ provided by the manufacturer show a sound-pressure level (SPL) of 209 dB re 1 μPa-m root-mean-square (RMS). The amplitude spectrum of this pulse indicates that most of the sound energy lies between 150 Hz and 1700 Hz (1.7 kHz), and the peak amplitude is at 900 Hz. The output sound pulse of the minisparker has a duration of about 0.8 milli-seconds (ms). When operated at sea for the multichannel seismic-reflection survey proposed herein, the minisparker will be discharged every 4 to 6 seconds.

The second seismic source that will be used during this survey is a Huntec™ system, which generates underwater sound at higher frequencies than does the minisparker. The Huntec system uses electromagnetically driven plates to produce an acoustic pulse every 0.5 seconds. This sound source is towed approximately 100 meters (328.1 ft) behind the ship in water depths greater than 200 m (656.2 ft). In shallow water, such as the inner shelf, the sound source is towed within 5 m (16.4 ft) of the sea surface. The SPL for this source is 205 dB re 1 μPa RMS. The frequencies of the main output sound are between 500 Hz and 8 kHz, with a peak amplitude at 4.5 kHz.

Description of Habitat and Marine Mammals Affected by the Activity

The Southern California Bight supports a diverse assemblage of 29 species of cetaceans (whales, dolphins and porpoises) and 6 species of pinnipeds (seals and sea lions). The species of marine mammals that are likely to be present in the seismic research area include the bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right whale dolphin (*Lissodelphis borealis*), Risso's dolphin (*Grampus griseus*), pilot whales (*Globicephala macrorhynchus*), Dall's porpoise (*Phocoenoides dalli*), sperm whale (*Physeter macrocephalus*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), blue whale (*Balaenoptera musculus*), minke whale (*Balaenoptera acutorostrata*), fin whales (*Balaenoptera physalus*), harbor seal (*Phoca vitulina*), elephant seal (*Mirounga angustirostris*), northern sea lion (*Eumetopias jubatus*), and California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*) and sea otters (*Enhydra lutris*). General information on these latter species can be found in the USGS application and in Forney *et al.* (1999) and Barlow *et al.* (1998, 1997). Please refer to these documents for information on the biology, distribution, and abundance of these species in southern California waters.

Potential Effects of Seismic Surveys on Marine Mammals

Discussion

Seismic surveys are used to obtain data about stratigraphic sequences and rock formations up to several thousands of feet deep. These surveys are accomplished by transmitting sound waves into the earth, which are reflected off subsurface formations and recorded with detectors in the water column.

Disturbance by seismic noise is the principal means of taking by this activity. Vessel noise may provide a secondary source. Also, the physical presence of vessel(s) could lead to some non-acoustic effects involving visual or other cues.

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by open-water seismic operations may be detectable some distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or of masking a signal of comparable frequency. An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source (or vessel) react to the generated sounds or to visual cues.

Seismic pulses are known to cause some species of whales, including gray whales, to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds is a possibility for those species of whales using low frequencies for communication, the intermittent nature of seismic source pulses limits the extent of masking. Bowhead whales in Arctic waters, for example, are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986).

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and seasons. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating are less likely than resting animals to show

overt behavioral reactions, unless the disturbance is directly threatening.

Hearing damage is not expected to occur during the project. While it is not known whether a marine mammal co-located or very close to the seismic source would be at risk of permanent hearing impairment, temporary threshold shift (TTS) is a theoretical possibility for animals close to the minisparker. However, planned monitoring and mitigation measures (described later in this document) are designed to detect marine mammals occurring near the seismic source(s) and to avoid, to the greatest extent practicable, exposing them to sound pulses that have any possibility of causing TTS in hearing.

Maximum Sound-Exposure Levels for Marine Mammals

The adverse effects of underwater sound on mammals have been documented for exposure times that last for tens of seconds or minutes, but adverse effects have not been documented for the brief pulses typical of the minisparker (0.8 ms) and the Huntec system (typically 0.3 ms). While NMFS in the past considered that the maximum SPLs, from impulse sounds, to which marine mammals should be exposed are 180 dB re 1 µPa-m RMS for mysticetes (baleen whales) and sperm whales, and 190 dB re 1 µPa-m RMS for odontocetes (toothed whales, dolphins and porpoises) and pinnipeds (seals and sea lions), recent workshops have recommended a more precautionary approach be taken and, accordingly, NMFS now recommends that odontocetes also be limited to an SPL no greater than 180 dB re 1 µPa-m RMS. However, based on statements and recommendations made at NMFS' Acoustic Criteria Workshop in 1998, NMFS has not increased its recommended safety zone for pinnipeds to this same level. In 1999, the California Coastal Commission (CCC) limited the maximum sound-exposure level to 180 dB re 1 µPa-m RMS for all species of marine mammals.

In its application, the USGS has provided two estimates of how close marine mammals can approach the minisparker source before it needs to be powered down. The first estimate follows the procedure required by the CCC in 1999, where underwater sound is assumed to attenuate with distance according to the equation 20log(Radius(R)), and the maximum SPL to which marine mammals can be exposed is 180 dB re 1 µPa-m RMS. The alternative estimate of safe distance is proposed for operations limited to shallow water. In shallow water, sound from the minisparker will decay (attenuate) with distance more sharply than 20log(R) because some of the sound energy will exit the water and penetrate the sea floor when the minisparker source is physically close to the sea floor.

In the deeper water (greater than 50 m (164 ft)) areas of the proposed survey, the safety zone for the minisparker is a circle whose radius is the distance from the source to where the SPL is reduced to 180 dB re 1 µPa-m RMS. For a 20log(R) sound attenuation, the safety zone for a 209 dB RMS source has a radius of about 30 m (98 ft).

Much of that part of the proposed 2000 survey that focuses on saltwater intrusion of coastal aquifers will be conducted close to shore, where water is shallow. In such areas, underwater sound commonly attenuates more sharply than 20log(R) because sound exits the water layer and penetrates into the substrate. In 1999, the USGS measured a sound attenuation of 27log(R) in shallow water off southern California. Therefore, the USGS proposes that for inshore areas, underwater sound will attenuate approximately like 25log(R), which for inshore areas would yield a safety zone with a radius of 15 m (49.2 ft). Because of this short radius of the safety zone in shallow water, the USGS proposes that the minisparker can be used at night, using spotlights to illuminate the safety zone around the tow sled.

Estimated Number of Potential Harassments of Marine Mammals

Based on estimated marine mammal populations within the survey area (Calambokidis and Francis, 1994) and on the number of individuals that were observed during the 1998 and 1999 seismic surveys, the USGS estimates that up to 50 blue whales, 5 killer whales, 10 minke whales, 10 sea otters, 50 humpback whales, 50 northern sea lions, 100 northern fur seals, 100 northern elephant seals, 100 Dall's porpoise, 100 Risso's dolphins, 100 northern right-whale dolphins, 100–200 Pacific white-sided dolphins, 100 bottlenosed dolphins, 200 California sea lions, 200 Pacific harbor seals, and 10,000–12,000 common dolphins may be harassed incidental to the USGS survey. No marine mammals will be seriously injured or killed as a result of the survey.

Proposed Mitigation of Potential Environmental Impact

To avoid potential Level A harassment (i.e., injury) of marine mammals, safety zones will be established and monitored continuously by biologists, and the USGS will shut off the seismic source whenever the ship and a marine mammal converge closer than the previously mentioned safety distance.

For gray, fin, blue and humpback whales, the marine mammal species near the survey area that are considered to be most sensitive to the frequency and intensity of the sound source, and for odontocetes, even with their lower sensitivity to the low frequency sound that will be emitted by the minisparker, minisparker operations will cease when members of these species approach within 30 m (98 ft) of the sound source when operating in deep water and 15 m (49.2 ft) when in shallow water as mentioned previously.

For pinnipeds (seals and sea lions), if the research vessel approaches a pinniped, a safety radius of 30 m (98 ft) around the seismic source when operating in deep water and 15 m (49.2 ft) when in shallow water will be maintained. However, if a pinniped approaches the towed minisparker source, NMFS proposes that it will not require the USGS to shutdown the minisparker, but will require the USGS to monitor the interaction to ensure the animal does not show signs of distress. Experience indicates that pinnipeds will come from great distances to inspect seismic operations. Seals have been observed swimming within airgun bubbles, 10 m (33 ft) away from active arrays, apparently unaffected. Although minisparker oprations will be terminated if the pinnipeds show obvious distress, the USGS will conduct observations on effects the minisparker may have on the animals.

The USGS plans to have marine biologists aboard the ship who will have the authority to stop the minisparker operations when a marine mammal enters the safety zone. If observations are made that one or more marine mammals of any species are attempting to beach themselves when the source is operating in the vicinity of the beaching, the minisparker will be immediately shut off and NMFS contacted.

During seismic-reflection surveying, the ship's speed will only be 4 to 5 knots, so that when the minisparker is being discharged, nearby marine mammals, if they hear the low frequency noise, will have gradual warning of the vessel's approach and can move away if disturbed. Finally, NMFS will coordinate with the local stranding network to determine whether strandings can be related to the seismic operation. If NMFS determines, based upon a necropsy of the animal(s), that the death was likely due to exposure to the minisparker, the survey shall cease

until procedures are altered to eliminate the potential for future deaths.

Operating less than 24 hours each day incurs substantially increased cost for the leased ship, which the USGS states that it cannot afford. The ship schedule provides a narrow time window for this project; other experiments are already scheduled to precede and follow this one and for that reason, the USGS cannot arbitrarily extend the survey time. Thus, the USGS does not propose as a mitigation measure shutting down in dark or during periods of poor visibility. The 2000 survey will require only three weeks, and it will be spread out geographically from Los Angeles to San Diego, so no single area will experience long-term activity. In the view of the USGS, the best course is to complete the experiment as expeditiously as possible. For these reasons, the USGS has requested that the Incidental Harassment Authorization (IHA) allow 24-hour operations, specifically at night and limiting surveys during this time to shallow water.

Monitoring and Reporting

Monitoring marine mammals while the minisparker is active will be conducted 24 hours each day. Trained marine mammal observers will be aboard the seismic vessel to mitigate the potential environmental impact from minisparker use and to gather data on the species, number, and reaction of marine mammals to the minisparker. During daylight, observers will use 7x50 binoculars with internal compasses and reticules to record the horizontal and vertical angle to sighted mammals. Night-time operations will be conducted with a spotlight to illuminate the safety zone around the minisparker tow sled. Monitoring data to be recorded during minisparker operations include the name of the observer on duty, and weather conditions (such as Beaufort sea state, wind speed, cloud cover, swell height, precipitation, and visibility). For each mammal sighting, the observer will record the time, bearing and reticule readings, species, group size, and the animal's surface behavior and orientation. Observers will instruct geologists to shut off the minisparker whenever a marine mammal enters the safety zone.

Possible Modifications or Alternatives to the Proposed Survey

The instructions for this permit request stipulate that the USGS consider alternatives to the proposed experiment. Options to change the activity are limited, but for the proposed survey, the USGS has changed from using an airgun source as used in prior surveys to a minisparker in order to reduce the probability for the harassment of marine mammals and to be able to operate within nearshore areas.

To abandon this study altogether is a poor option. The USGS has described the societal relevance of this project as it would improve understanding of fluid movement in coastal aquifers and how to stem the intrusion of salt water into them. Another facet of this study is to help scientists understand the regional earthquake hazard that, in turn, will aid city planners in establishing building codes. If the project was canceled, such information would be unavailable.

The seismic-source strength cannot be reduced further in an attempt to limit the potential environmental impact. The proposed minisparker is already smaller than any source the USGS has previously used for these kinds of geophysical surveys, and the problem with this option is that the USGS cannot significantly reduce the source strength without jeopardizing the success of this survey. This judgment is based on USGS' decades-long experience with seismic-reflection surveys, but especially on the 1998 survey that was conducted in the same general area as outlined here. If the USGS were to reduce the sound-source size and then fail to obtain the required information, another survey would need to be conducted, and this would have the potential to increase impact on marine mammals.

This project could be carried out at some other time of year, and the USGS is open to suggestions. The USGS talked with biologists to find out the best time for the project to be conducted. The USGS wants to avoid the gray whale migrations and the mid-summer arrival of other mysticete species because, while these species remain mostly in the area of the Channel Islands, some individuals venture closer to the mainland. An important consideration in deciding the most appropriate time of the year is that biologists can best prevent harm to mammals when daylight is long, that is, near the solstice.

Reporting

The USGS will contract with qualified marine-mammal observers to provide an initial report to NMFS within 160 days of the completion of the 2000 phase of the marine seismic project. This report will provide dates and locations of seismic operations, details of marine mammal sightings, and estimates of the amount and nature of all takes by harassment. A final technical report will be provided by USGS within 1 year of completion of the 2000 phase of the marine seismic project. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an IHA. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

Conclusions

NMFS has preliminarily determined that the short-term impact of conducting marine seismic-reflection data in offshore southern California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds and cetaceans. While behavioral modifications may be made by certain species of marine mammals to avoid the resultant noise from the minisparker, this behavioral change is expected to have a negligible impact on the animals.

In addition, no take by injury and/or death is anticipated, and takes will be at the lowest level practicable due to the incorporation of the mitigation measures previously mentioned. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Proposed Authorization

NMFS proposes to issue an IHA to the USGS for the possible harassment of small numbers of several species of marine mammals incidental to collecting marine seismic-reflection data off southern California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of each of several species of marine mammals and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: March 22, 2000.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–7611 Filed 3–27–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 24, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Levels for textile products in Categories 338/638, 339/639 and 433.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 24, 2000.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on March 27, 2000, you are directed to increase the Guaranteed Access Levels for the categories listed below for the period beginning on January 1, 2000 and extending through December 31, 2000.

Category	Guaranteed access level
338/638	3,150,000 dozen.
339/639	2,150,000 dozen.
433	61,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–7717 Filed 3–27–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, April 7, 2000.

PLACE: 1155 21st St., NW, Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7720 Filed 3–24–00; 1:51 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m. Friday, April 14, 2000.

PLACE: 1155 21st St., NW, Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7721 Filed 3–24–00; 1:51 pm]

BILLING CODE 6351–07–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, April 21, 2000.

PLACE: 1155 21st St., NW, Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7722 Filed 3–24–00; 1:55 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, April 28, 2000.

PLACE: 1155 21st St., NW, Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7723 Filed 3–24–00; 1:51 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations (CFR), which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Science Applications International Corporation, a company having its headquarters in San Diego, CA, an exclusive license in any right, title and interest the Air Force has in: U.S. Patent No. 5,942,157. A co-inventor, Wade W. Adams, was a government employee at the time of invention. The invention is entitled ''Switchable Volume Hologram Materials and Devices.''

The license described above will be granted unless an objection, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached by telephone at 703–588–5091 or by fax at 703–588–8037.

Janet A. Long,

Federal Register Liaison Officer.

[FR Doc. 00–7517 Filed 3–27–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Notice of Renewal of the Secretary of Energy Advisory Board

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (the Board) has been renewed for an additional two-year period, beginning in March 2000.

The Board will continue to provide independent, balanced, and authoritative advice to the Secretary of Energy on matters concerning the Department's management, basic science, research, development and technology activities; energy and national security responsibilities; environmental cleanup activities; energy-related economic activities; and the operations of the Department.

The Board members are selected to assure well-balanced geographical representation and on the basis of their broad competence in areas relating to quality management, basic science, renewable energy, energy policy, environmental science, economics, and broad public policy interests. Membership of the Board will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act (Public Law 92–463) and implementing regulations.

The renewal of the Board has been determined to be in the public interest, important and vital to the conduct of the Department's business in connection with the performance of duties established by statute for the Department of Energy. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel, U.S. Department of Energy, MA–72, FORS, Washington, D.C. 20585, Telephone: (202) 586–3279.

Issued in Washington, D.C. on March 20, 2000.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 00–7580 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Kangley-Echo Lake Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's intention to prepare an EIS on the construction, operation, and maintenance of a 10-mile-long 500-kilovolt (kv) transmission line in King County, State of Washington. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act.

DATES: BPA has established a 30-day scoping period. Written comments are due to the address below no later than April 27, 2000.

Comments may also be made at an EIS scoping meeting to be held on Tuesday, April 11, 2000.

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the Draft EIS. Send comment letters and requests to be placed on the project mailing list to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Communications office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland. Comments may also be sent to the BPA Internet address: *comment@bpa.gov.*

The EIS scoping meeting will be held on April 11, 2000, from 3:00 p.m. to 8:00 p.m. at the Mt. Si Senior Center, 411 Main Avenue South, North Bend, Washington. At the informal meeting, we will have several members of the project team available to answer your questions and accept oral and written comments.

FOR FURTHER INFORMATION, CONTACT: Lou Driessen, Project Manager, Bonneville Power Administration—TNP–3, P.O. Box 3621, Portland, Oregon, 97208–3621; phone number 503–230–5525; or

e-mail *lcdriessen@bpa.gov.* You may also contact Gene Lynard, Environmental Project Manager, Bonneville Power Administration—KECN–4, P.O. Box 3621, Portland, Oregon, 97208–3621; phone number 503–230–3790; fax number 503–230–5699; or email: *gplynard@bpa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces BPA's intention to prepare an EIS on the construction, operation, and maintenance of a 10-mile-long 500-kv transmission line. This action may involve floodplain and wetlands located in King County, State of Washington. The action is necessary to maintain reliable load service during severe winter conditions in the growing northwest Washington area. The intended effect on the public is to maintain a reliable high-voltage transmission system and to avoid significant load loss in the south Seattle area. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold a public comment meeting for the Draft EIS. BPA will consider and respond to comments received on the Draft EIS in the Final EIS during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project.

BPA proposes to construct a 500-kv transmission line near the community of Kangley in King County, Washington, in 2002. BPA has identified three action alternatives for constructing the transmission line, all of which cross the Cedar River Municipal Watershed. The Cedar River Municipal Watershed is a large natural area in the Cascade Mountains that is used by the City of Seattle to collect approximately two thirds of the potable water for about 1.3 million people in King and Snohomish Counties.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on March 17, 2000.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 00–7581 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Open Meeting

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: April 13, 2000 from 8:00 am to 5:00 pm, and April 14, 2000 from 8:00 am to 1:00 pm. Phone: 800/689–6765 or 910/256–8696.

PLACE: The Madison Hotel, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda

- Release of the STEAB Eighth Annual Report.
- Discussions of Fiscal Year 2002 Federal Budget.
- STEAB Committee updates.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 23, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7579 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Thursday, April 13, 2000, 8:30am–4:30pm.

Friday, April 14, 2000, 8:30am–12:00 noon.

PLACE: U. S. Department of Energy, Forrestal Building, 1000 Independence Ave., S.W., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, Washington, DC 20585, Telephone: (202) 426–1101. Alternately, Mr. Weinig may be contacted by email at william.weinig@eia.doe.gov or by FAX at (202) 426–1083.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's experience concerning other energy-related statistical matters.

Tentative Agenda

Thursday, April 13, 2000

A. Opening Remarks by the Chair, Room 8E–089

B. Major Topics

1. Panel Discussion on Confidentiality Legislation, Room 8E–089
2. System for Analysis of Global Energy (SAGE) Markets, 8E–089
3. Cognitive Interviews on EIA's Web Site, Room 8E–089
4. Electricity Forecasting Beyond New England, GH–019
5. Progress on Auditing Software, GH–027
6. Methodological Issues in the Energy Consumption Surveys, GH–035

7. Redesign of Electricity Data Collections: 2002, 8E–089

Friday, April 14, 2000

C. Major Topics
1. EIA Responses to Market Changes in Natural Gas, Room 8E–089
2. Announce the Winners of the 7th Annual EIA Graphics Contest, Room 8E–089
3. Measuring Uncertainty in Energy CO2 Emissions: Evaluating a Monte Carlo Approach, Room 8E–089
4. Panel Discussion on Challenges in Measuring Data Quality, 8E–089

D. Closing Remarks by the Chair, 8E–089

Public Participation: The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

Minutes: Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on March 23, 2000.

Rachel M. Samuel,

Deputy Advisory CommitteManagement Officer.

[FR Doc. 00–7578 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–218–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

March 22, 2000.

Take notice that on March 16, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective April 16, 2000.

Natural states that the purpose of this filing is to implement new Rate Schedule IBS, under which Natural would provide an interruptible imbalance management service on a no-notice basis for end-use facilities in conjunction with transportation under Rate Schedules FTS, FTS–G and ITS. This service would be provided through management of line pack. Conforming tariff changes have also been made in the General Terms and Conditions of the Tariff and in the pro forma service agreement. This filing represents a resubmission with some modification of Natural's previous tariff filing in Docket No. RP00–77, which was rejected by the Commission (without prejudice to refiling) in an order issued December 30, 1999 (89 FERC ¶ 61,341). Unlike the submission rejected in Docket No. RP00–77, this filing includes extensive supporting material, including a cost and revenue study and testimony. Natural states that the testimony addresses, *inter alia*, the issues raised by the intervenors in the prior filing at Docket No. RP00–77.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective April 16, 2000.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7529 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–219–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 22, 2000.

Take notice that on March 16, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective May 1, 2000.

Third Revised Volume No. 1

Twelfth Revised Sheet No. 14

Original Volume No. 2

Twenty-Eighth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to propose new fuel reimbursement factors (Factors) for Northwest's transportation and storage rate schedules. The Factors allow Northwest to be reimbursed in-kind for the fuel used during the transmission and storage of gas and for the volumes of gas lost and unaccounted-for that occur as a normal part of operating the transmission system.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7530 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–75–001]

Questar Pipeline Company; Notice of Tariff Filing

March 22, 2000.

Take notice that on March 20, 2000, Questar Pipeline Company (Questar) tendered for filing and acceptance, to be effective January 5, 2000, the following tariff sheets to Original Volume No. 3 of its FERC Gas Tariff.

Original Volume No.
Sixth Revised Sheet No. 2
Third Revised Sheet No. 9
Seventh Revised Sheet No. 10
First Revised Sheet No. 330

Questar filed an application under section 7(b) of the Natural Gas Act in Docket No. CP00–75–000, on January 27, 2000, as supplemented February 10, 2000, to abandon service under a certificated agreement between Questar and Northern Natural Gas Company (Northern). On January 5, 2000, Northern signed a letter indicating its agreement to the abandonment of this service. On March 10, 2000, the Commission issued an order granting permission for, and approval of, the abandonment to be effective January 5, 2000. Therefore, Questar filed to revise tariff sheets reflecting the cancellation of Rate Schedule X–28.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7527 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1858–001, et al.]

New Hampshire Electric Cooperative, Inc., et al; Electric Rate and Corporate Regulation Filings.

March 20, 2000.

Take notice that the following filings have been made with the Commission:

1. New Hampshire Electric Cooperative, Inc.

[Docket No. ER00–1858–001]

Take notice that on March 14, 2000, New Hampshire Electric Cooperative, Inc. (NHEC), tendered for filing the Revised Petition of New Hampshire Electric Cooperative, Inc., for Acceptance of Initial Rate Schedule, Waivers, and Blanket Authority (Revised Petition). The Revised Petition replaces the March 10, 2000 Petition of New Hampshire Electric Cooperative, Inc., for Acceptance of Initial Rate Schedule, Waivers, and Blanket Authority.

By its March 14, 2000 filing, NHEC petitioned the Commission for acceptance of NHEC Rate Schedule, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

NHEC intends to engage in wholesale electric power and energy sales as a marketer. NHEC is a consumer-owned electric generation and distribution cooperative that provides electric service to 65,000 customers in New Hampshire

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER00–1883–000]

Take notice that on March 15, 2000, Florida Keys Electric Cooperative Association, Inc., tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

A copy of this filing has been served on CES and the Florida Public Service Commissioner.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Southwest Power Pool, Inc.

[Docket No. ER00–1884–000]

Take notice that on March 15, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing an executed service agreement for firm point-to-point transmission service under the SPP Tariff with Southwestern Public Service Company (SPS).

SPP requests an effective date of January 1, 2002 for this agreement.

Copies of this filing were served upon SPS.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Energy Corporation

[Docket No. ER00–1885–000]

Take notice that on March 15, 2000, Duke Energy Corporation (Duke), on behalf of Duke Electric Transmission, a division of Duke, tendered for filing an Interconnection and Operating Agreement with Broad River Energy LLC (Broad River).

Duke requests an effective date of March 16, 2000.

Duke states that a copy of this filing was been mailed to Broad River.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER00–1886–000]

Take notice that on March 15, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, British Columbia Power Exchange Corporation (POWERX).

CILCO requested an effective date of March 9, 2000.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Light Company

[Docket No. ER00–1887–000]

Take notice that on March 15, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois

61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, British Columbia Power Exchange Corporation (POWERX).

CILCO requested an effective date of March 9, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER00–1888–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Conectiv Energy Supply, Inc. (Conectiv).

Cinergy and Conectiv are requesting an effective date of March 1, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER00–1889–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Texas Electric Marketing, LLC (Texas).

Cinergy and Texas are requesting an effective date of February 20, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER00–1890–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Texas Electric Marketing, LLC (Texas).

Cinergy and Texas are requesting an effective date of February 20, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER00–1891–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Conectiv Energy Supply, Inc., (Conectiv).

Cinergy and Conectiv are requesting an effective date of March 1, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER00–1892–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Allegheny Energy Supply Company, LLC (Allegheny).

Cinergy and Allegheny are requesting an effective date of February 21, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER00–1893–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Allegheny Energy Supply Company, LLC (Allegheny).

Cinergy and Allegheny are requesting an effective date of February 21, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ER00–1894–000]

Take notice that on March 15, 2000, Consumers Energy Company (Consumers), tendered for filing a Facility Engineering Authorization Agreement between Consumers and SEI Michigan, L.L.C. [SEI] (Agreement), dated March 3, 2000, (Agreement). Under the Agreement, Consumers is to perform engineering and other preliminary work associated with providing an electrical connection between a generating plant to be built by SEI and Consumers' transmission system.

Consumers requested that the Agreements be allowed to become effective by March 3, 2000.

Copies of the filing were served upon SEI and the Michigan Public Service Commission.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Dynegy Midwest Generation, Inc.

[Docket No. ER00–1895–000]

Take notice that on March 15, 2000, Dynegy Midwest Generation, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002–5050 tendered for filing with the Federal Energy Regulatory Commission a Notice of Succession to reflect a name change from Illinova Power Marketing, Inc., to Dynegy Midwest Generation, Inc.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph E

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7577 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–035, North Carolina]

Yadkin, Inc.; Notice Extending Public Comment Period for Draft Environment Assessment

March 22, 2000.

Staff from the Federal Energy Regulatory Commission (Commission) are extending the public comment period for our draft environmental assessment (DEA) issued for the Yadkin Hydroelectric Project. The DEA analyzes the environmental impacts of a Shoreline Management Plan (SMP) filed for Commission approval. The Yadkin Project is located on the Yadkin-Pee Dee River in Montgomery, Stanly, Davidson and Rowan Counties, North Carolina.

The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows (Badin) and Falls.

Comments will be solicited on our DEA until April 17, 2000. The DEA was written by staff in the Commission's Office of Energy Projects. Commission staff believe the SMP would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEA can be viewed on the web at *www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the DEA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed by April 17, 2000. Send an original and eight copies of all comments marked with the project number P–2197–035 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please call Steve Hocking at (202) 219–2656.

David P. Boergers,

Secretary.

[FR Doc. 00–7531 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protest

March 22, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11815–000.

c. *Date filed:* September 7, 1999, and revised on October 21, 1999.

d. *Applicant:* Harms Mill Power Company, Inc.

c. *Name of Project:* Harms Mill Power Project.

f. *Location:* At the existing Harms Mill Dam, on the Elk River, near the Town of Fayetteville, Lincoln County, Tennessee.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Curtis Hunter, Harms Mill Power Company, Inc., P.O. Box 3281, Huntsville, Alabama 35810, (256) 851–6277 or Mr. Ted Randolph, Harms Mill Power Company, Inc., 391 Dan Tibbs Road, Huntsville, Alabama 35806, (256) 852–1214.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* May 30, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) The existing Harms Mill Dam with a 250-foot-long spillway; (2) a 75-foot-long powerhouse having an installed capacity of 300 kilowatts; (3) a new 2.1-mile-long, 13-kV transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 1,800 Megawatt hours. The cost of the studies under the permit will not exceed $20,000.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO

INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–7526 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

March 22, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11818–000

c. *Dated filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Fresno Dam Hydroelectric Project.

f. *Location:* On the Milk River, near the town of Havre, Hill County, Montana, utilizing federal lands administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@ferc.fed.us.

j. *Comment Date:* May 30, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing Fresno Dam and Reservoir with lands owned by the U.S. Bureau of Reclamation, and would consist of: (1) A steel penstock, about 150-foot-long and 9-foot-in-diameter; (2) a new 60-foot-long, 30-foot-wide, 30-foot-high powerhouse to be constructed on the downstream side of the dam; (3) two turbine/generator units having a total installed capacity of 3 megawatts; (4) a new 100-foot-long, 14.7-kilovolt transmission line; and (5) appurtenant facilities.

The proposed average annual generation is estimated to be 18 gigawatt hours. The cost of studies under the permit will not exceed $1,000,000.

i. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminiary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'',

''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–7528 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 22, 2000.

The following notice of meeting is published pursuant to Section 3(A) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 29, 2000, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda * Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, for a Recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; However all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro; 737th—Meeting March 29, 2000; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–1927, 013, PACIFICORP
CAH–2.
DOCKET# P–2197, 036, YADKIN, INC.
CAH–3.
DOCKET# P–11634, 000, CONTINENTAL LANDS, INC.
CAH–4.
DOCKET# P–7041, 043, POTTER TOWNSHIP HYDROELECTRIC AUTHORITY

Consent Agenda—Electric

CAE–1.
DOCKET# ER00–1239, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–2.
DOCKET# ER00–1483, 000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
CAE–3.
DOCKET# ER00–1411, 000, ILLINOIS POWER COMPANY
CAE–4.
DOCKET# ER00–1404, 000, WEST TEXAS UTILITIES COMPANY AND CENTRAL AND SOUTH WEST SERVICES, INC.
CAE–5.
DOCKET# ER00–1379, 000, AMEREN SERVICES COMPANY
OTHER#S ER00–1386, 000, AMEREN SERVICES COMPANY
ER00–1387 000, AMEREN SERVICES COMPANY
CAE–6.
DOCKET# ER00–1519 000, INPOWER MARKETING CORPORATION
CAE–7.
DOCKET# ER00–1030, 000, AMERGEN VERMONT, LLC
OTHER S
EL00–33, 000, AMERGEN VERMONT, LLC
EL00–38, 000, LOUISIANA GENERATING, LLC
ER00–1259, 000, LOUISIANA GENERATING, LLC
ER00–1463, 000, ORION POWER MIDWEST, LLC
ER00–1502, 000, BONNIE MINE ENERGY, LLC
ER00–1517, 000, SAN JOAQUIN COGEN LIMITED
ER00–1598, 000, BALTIMORE GAS AND ELECTRIC COMPANY, CALVERT CLIFFS, INC., CONSTELLATION GENERATION, INC. AND CONSTELLATION POWER SERVICE, INC.
CAE–8.
DOCKET# ER00–1389, 000, NEW ENGLAND POWER POOL
CAE–9.
DOCKET# ER00–1516, 000, PJM INTERCONNECTION, L.L.C.
CAE–10.
DOCKET# ER00–801, 000, TAMPA ELECTRIC COMPANY
CAE–11.
DOCKET# ER00–1580, 000, CINERGY OPERATING COMPANIES
CAE–12.
DOCKET# ER00–1572, 000, USGEN NEW ENGLAND, INC.
CAE–13.
DOCKET# ER00–941, 000, PJM INTERCONNECTION, L.L.C.
CAE–14.
DOCKET# ER00–1533, 000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–15.
DOCKET# ER00–1365, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–16.
DOCKET# ER00–1671, 000, NEW YORK STATE RELIABILITY COUNCIL
CAE–17.
DOCKET# ER99–3110, 000, NEVADA POWER COMPANY
CAE–18.
OMITTED
CAE–19.
DOCKET# ER00–395, 002, ISO NEW ENGLAND, INC.
OTHER#S ER00–395, 001, ISO NEW ENGLAND, INC.
CAE–20.
DOCKET# EC99–81, 001, DOMINION RESOURCES, INC.
CAE–21.
DOCKET# ER00–1439, 000, AUTOMATED POWER EXCHANGE, INC.
CAE–22.
DOCKET# ER99–897, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY
CAE–23.
DOCKET# ER99–2852, 000, ARIZONA PUBLIC SERVICE COMPANY
CAE–24.
DOCKET# EC00–45, 000, WISCONSIN ELECTRIC POWER COMPANY
CAE–25.
DOCKET# EC00–33, 000, WISCONSIN POWER & LIGHT COMPANY
CAE–26.
DOCKET# EC00–29, 000, ALLIANT ENERGY CORPORATE SERVICES, INC.
CAE–27.
DOCKET# EC00–1, 000, ENERGY EAST CORPORATION AND CMP GROUP, INC.
CAE–28.
DOCKET# EC00–48, 000, CAJUN ELECTRIC POWER COOPERATIVE, INC. AND LOUISIANA GENERATING LLC
CAE–29.
DOCKET# ER99–4545, 002, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER99–4545, 003, CALIFORNIA

INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–30.
DOCKET# ER97–1523, 020, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
OTHER#S OA97–470, 019, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
OA97–470, 020, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
ER97–1523, 021, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
ER97–4234, 017, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
ER97–4234, 018, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL

CAE–31.
OMITTED

CAE–32.
DOCKET# ER00–550, 001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S ER00–556, 001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION

CAE–33.
DOCKET# ER00–950, 001, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–34.
DOCKET# RM99–12, 000, DESIGNATION OF ELECTRIC RATE SCHEDULE SHEETS

CAE–35.
DOCKET# EL99–91, 000, PACIFIC GAS AND ELECTRIC COMPANY

CAE–36.
DOCKET# EL99–58, 000, VILLAGE OF FREEPORT, NEW YORK V. CONSOLIDATED EDISON COMPANY OF NEW YORK

CAE–37.
DOCKET# EG00–89, 000, LOUISIANA GENERATING LLC

CAE–38.
DOCKET# OA00–1, 000, NEW ENGLAND POWER COMPANY, MASSACHUSETTS ELECTRIC COMPANY, THE NARRAGANSETT ELECTRIC COMPANY, NEW ENGLAND ELECTRIC TRANSMISSION CORPORATION, NEW ENGLAND HYDRO-TRANSMISSION CORPORATION, NEW ENGLAND HYDRO-TRANSMISSION ELECTRIC COMPANY, INC., ALLENERGY MARKETING COMPANY, L.L.C., MONTAUP ELECTRIC COMPANY, BLACKSTONE VALLEY ELECTRIC COMPANY, EASTERN EDISON COMPANY, NEWPORT ELECTRIC CORPORATION AND RESEARCH DRIVE, L.L.C.
OTHER#S ER99–2832, 001, NEW ENGLAND POWER COMPANY AND MONTAUP ELECTRIC COMPANY

CAE–39.
DOCKET# OA00–3, 000, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING COMPANY

CAE–40.
DOCKET# OA99–1, 000, NORTHERN STATES POWER COMPANY (MINNESOTA), NORTHERN STATES POWER COMPANY (WISCONSIN), PUBLIC SERVICE COMPANY OF COLORADO, CHEYENNE LIGHT, FUEL AND POWER COMPANY AND SOUTHWESTERN PUBLIC SERVICE COMPANY

CAE–41.
OMITTED

CAE–42.
DOCKET# ER00–866, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP00–187, 000, NATIONAL FUEL GAS SUPPLY CORPORATION

CAG–2.
DOCKET# RP00–188, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP

CAG–3.
DOCKET# RP96–200, 051, RELIANT ENERGY GAS TRANSMISSION COMPANY

CAG–4.
DOCKET# RP00–184, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA

CAG–5.
DOCKET# RP00–199, 000, RELIANT ENERGY GAS TRANSMISSION COMPANY

CAG–6.
DOCKET# RP00–183, 000, COLORADO INTERSTATE GAS COMPANY

CAG–7.
OMITTED

CAG–8.
DOCKET# RP00–195, 000, TRANSCOLORADO GAS TRANSMISSION COMPANY

CAG–9.
OMITTED

CAG–10.
DOCKET# RP00–205, 000, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
OTHER#S RP00–205, 001, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION

CAG–11.
DOCKET# RP97–14, 004, MIDWESTERN GAS TRANSMISSION COMPANY
OTHER#S GT00–16, 000, MIDWESTERN GAS TRANSMISSION COMPANY

CAG–12.
DOCKET# RP00–21, 000, CNG TRANSMISSION CORPORATION
OTHER#S RP00–21, 002, CNG TRANSMISSION CORPORATION

CAG–13.
DOCKET# RP00–190, 000, VIKING GAS TRANSMISSION COMPANY

CAG–14.
DOCKET# RP00–203, 000, ANR PIPELINE COMPANY
OTHER#S RP00–203, 001, ANR PIPELINE COMPANY

CAG–15.
DOCKET# RP00–209, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

OTHER#S RP00–209, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–16.
DOCKET# RP00–204, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP00–204, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–17.
DOCKET# RP00–84, 000, KANSAS PIPELINE COMPANY
CAG–18.
DOCKET# RP99–190, 001, NATIONAL FUEL GAS DISTRIBUTION CORPORATION
CAG–19.
DOCKET# RP99–260, 000, EAST TENNESSEE NATURAL GAS COMPANY
OTHER#S RP99–261, 000, EAST TENNESSEE NATURAL GAS COMPANY
RP99–460, 000, EAST TENNESSEE NATURAL GAS COMPANY
RP00–211, 000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–20.
DOCKET# RP00–30, 002, ANR PIPELINE COMPANY
OTHER#S RP00–30, 003, ANR PIPELINE COMPANY
RP00–30, 004, ANR PIPELINE COMPANY
RP00–30, 005, ANR PIPELINE COMPANY
CAG–21.
DOCKET# RP00–154, 001, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–22.
DOCKET# RP00–24, 002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP00–24, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP00–24, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–23.
DOCKET# RP00–128, 002, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S RP00–128, 001, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–24.
DOCKET# RP97–287, 045, EL PASO NATURAL GAS COMPANY
CAG–25.
DOCKET# RP00–168, 000, NORTHWEST PIPELINE CORPORATION V. El PASO NATURAL GAS COMPANY
CAG–26.
DOCKET# RP97–29, 003, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–27.
DOCKET# RP96–275, 005, TENNESSEE GAS PIPELINE COMPANY
CAG–28.
DOCKET# MG00–6, 000, CONSOLIDATED NATURAL GAS COMPANY
CAG–29.
DOCKET# CP99–624, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–30.
DOCKET# CP99–592, 000, SOUTHWEST GAS TRANSMISSION COMPANY, A LIMITED PARTNERSHIP
CAG–31.
DOCKET# CP98–49, 004, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–32.
DOCKET# CP99–191, 002, NORTHERN NATURAL GAS COMPANY
CAG–33.
DOCKET# CP97–256, 005, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
OTHER#S CP97–256, 006, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–34.
DOCKET# CP98–74, 002, ANR PIPELINE COMPANY V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S CP98–74, 001, ANR PIPELINE COMPANY V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–35.
DOCKET# RP95–363, 017, EL PASO NATURAL GAS COMPANY
OTHER#S RP98–407, 001, EL PASO NATURAL GAS COMPANY
RP99–507, 001, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY v. El PASO NATURAL GAS COMPANY
CAG–36.
DOCKET# CP99–604, 000, SOUTHERN NATURAL GAS COMPANY
CAG–37.
DOCKET# CP92–481, 001, NORTHERN ILLINOIS GAS COMPANY
OTHER#S PR93–11, 001, NORTHERN ILLINOIS GAS COMPANY
PR94–16, 001, SOUTHERN CALIFORNIA GAS COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
DOCKET# RM99–5, 000, REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT GOVERNING THE MOVEMENT OF NATURAL GAS ON FACILITIES ON THE OUTER CONTINENTAL SHELF
ORDER ON FINAL RULE.

David P. Boergers,

Secretary.

[FR Doc. 00–7670 Filed 3–23–00; 4:58 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Record of Decision for the Energy Planning and Management Program; Integrated Resource Planning Approval Criteria

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision

SUMMARY: Western Area Power Administration (Western) completed a Final Environmental Impact Statement (EIS), DOE/EIS–0182, on its Energy Planning and Management Program (EPAMP); and a Supplement Analysis, DOE/EIS–0182–SA–1, on the Integrated Resource Plan (IRP) program. Western is publishing this Record of Decision (ROD) to adopt revisions to its current regulations that require customers to prepare IRPs (10 CFR part 905). These revisions allow customers more alternatives in meeting the IRP requirements.

DATES: This ROD is effective March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Simmons Buntin, Energy Services Specialist, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (720) 962–7419, fax (720) 962–7427, e-mail buntin@wapa.gov.

SUPPLEMENTARY INFORMATION: Section 114 of the Energy Policy Act of 1992 (EPAct), Public Law 102–486, requires integrated resource planning by Western's customers. Western implemented EPAct through completion of the EPAMP in October 1995. The EPAMP was published in the Code of Federal Regulations at 10 CFR part 905. The EPAMP was addressed in a final EIS that was distributed to the public on June 27, 1995. The Environmental Protection Agency notice of availability was published on July 21, 1995 (60 FR 37640). The final EIS addressed requirements for full IRPs and other planning options for small customers. Western issued its ROD for EPAMP on September 21, 1995 (60 FR 53181), selecting the preferred alternative as described in the final EIS. Essential elements of Western's preferred alternative required IRPs for many of Western's long-term customers, and a Small Customer Plan option for those customers with total energy sales or usage of 25 gigawatthours (GWh) or less, which are not members of either a joint action agency or a generation and transmission cooperative with power supply responsibility, and which have limited economic, managerial, and

resource capabilities. Other alternatives considered are addressed in Western's September 21, 1995, ROD on EPAMP.

Following EPAct requirements, Western's Administrator initiated a public process to review Western's IRP regulations on November 17, 1999 (64 FR 62604). The Administrator is authorized to revise Western's criteria for approving IRPs ''to reflect changes, if any, in technology, needs, or other developments.''

In response to this public process, Western proposed revised IRP Criteria, revisions to the Small Customer Plan, and two new options that will be promulgated with the new regulation. Western is adopting an approach that features customer choice and flexibility, and reflects the transition of the electric utility industry. Customers can choose to continue preparing IRPs, or can adopt approaches that are emerging in lieu of IRP requirements. These new approaches include compliance with a defined level of investment in demand-side management and/or renewable energy, including compliance with a public benefits program, or compliance with mandated energy efficiency and/or renewable energy activities and related reporting requirements. The revisions were not addressed in the EIS for EPAMP. It was unclear whether or not to prepare an EIS supplement for the revisions, so Western prepared a Supplement Analysis (DOE/EIS–0182–SA–1) addressing the changes pursuant to 10 CFR part 1021.314. Based on the Supplement Analysis, Western determined that no further National Environmental Policy Act documentation is required for the revisions to the IRP regulations. Therefore, Western has decided to promulgate new IRP regulations. The Supplement Analysis is available upon request.

No Mitigation Action Plan will be prepared for the new IRP regulations, as the proposal involves no construction, and no mitigation was identified as necessary to implement the new regulations.

Dated: March 13, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–7582 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Washoe Project—Nonfirm Power

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration (Western) is proposing rates to sell nonfirm energy from Stampede Powerplant (Stampede) of the Washoe Project. Stampede is in Sierra County, California. The current rates expire September 30, 2000. The proposed rates will provide sufficient revenue to repay all annual costs, including interest expense, and repay required investment within the allowable period. Rate impacts are detailed in a rate brochure to be provided to all interested parties. Proposed rates are scheduled to go into effect on October 1, 2000, to correspond with the start of the Federal fiscal year (FY), and will remain in effect through September 30, 2005. This **Federal Register** notice initiates the formal process for the proposed rates.

DATES: The consultation and comment period begins today and will end April 27, 2000. During this period Western will accept written comments from interested parties.

ADDRESSES: Send written comments to Mr. Jerry W. Toenyes, Regional Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710. Western must receive written comments by the end of the consultation and comment period to assure they are considered.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Dietz, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4453.

SUPPLEMENTARY INFORMATION: Proposed rates for the sale of nonfirm energy from Stampede consist of floor and ceiling rates and are designed to recover an annual revenue requirement that includes investment repayment, interest, project use costs, and operation and maintenance expense. A power repayment study indicates the ceiling rate provides sufficient revenue to repay all annual costs, including interest expense, and the investment within the allowable period. Other analyses indicate the proposed floor rate provides sufficient revenue to pay annual operation and maintenance expenses. Proposed floor and ceiling rates for nonfirm energy from Stampede Powerplant are 17.89 mills/kilowatthour (mills/kWh) and 90.07 mills/kWh, respectively. The proposed rates are designed to ensure maximum recovery of annual revenue requirement at marketable rates.

To serve project use loads and market the energy from Stampede, Western's contract with Sierra Pacific Resources (Sierra) provides for the Stampede Energy Exchange Account (SEEA). SEEA is an annual energy exchange account for Stampede energy. Under this contract, Sierra accepts delivery of all energy generated from Stampede into Sierra's electrical system. The dollar value of the Stampede energy received by Sierra during any month is credited into the SEEA. Western uses the SEEA to benefit project use facilities, market energy from Stampede to preference entities over Sierra's transmission system, and sell a portion of the energy to Sierra. Beginning January 1, 2005, energy available after meeting project use requirements will be sold to the Central Valley Project (CVP) at the ceiling rate, as provided in the CVP 2004 Marketing Plan. As long as Western has a balance in the SEEA, Western and Sierra agree to do any combination of the above transactions in any month.

After meeting project use power requirements, the remaining energy available through the SEEA is sold either to Sierra at the proposed floor rate or to other entities, giving priority to preference customers, at a rate not greater than the proposed ceiling rate but more than the proposed floor rate. The formula for the proposed floor rate is equal to 85 percent of the then effective, nontime differentiated rate provided in Sierra's California Quarterly Short Term Purchase Price Schedule for As-Available Purchases from Qualifying Facilities with Capacities of 100 kilowatts (kW) or Less. This floor rate reflects the rate used to determine a value of the SEEA for the benefit of project use facilities. Western determines the proposed ceiling rate as the rate necessary to repay the Stampede annual expenses and power investment over the remaining repayment period of the power facilities.

A comparison of existing and proposed rates follows:

Nonfirm energy rate	Existing rates as of October 1, 1995 mills/kWh	Proposed rates October 1, 2000 mills/kWh	Percent change
Floor Rate	19.26	17.89	−7
Ceiling Rate	80.44	90.07	12

Stampede Powerplant is a feature of the Washoe Project authorized by Congress in 1956 and is located on the Little Truckee River in Sierra County, California. The powerplant has a maximum operating capability of 3,650 kW with an estimated annual generation of 11 million kWh. Since Stampede Powerplant has an installed capacity of less than 20,000 kW and generates less than 100 million kWh annually for sale, the proposed rates constitute a minor rate adjustment. Western has determined that it is not necessary to hold a public information or comment forum for this proposed minor rate adjustment (10 CFR 903). After Western reviews the comments received, it will recommend the proposed rates (and as amended) for approval on an interim basis by the Department of Energy (DOE) Deputy Secretary.

Legal Authority

These nonfirm energy rates for Stampede are established under the DOE Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the project involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

The rate brochure, studies, comments, letters, memorandums, and other documents made or kept by Western in developing the proposed rates to sell nonfirm energy from Stampede are available for inspection and copying at the Sierra Nevada Customer Service Regional Office, at 114 Parkshore Drive, Folsom, California.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking involving rates or services for public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA), of 1969, 42 U.S.C. 4321, *et seq.*, Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and the DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: March 14, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–7583 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6565–7]

Proposed Administrative Settlement under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act; In The Matter of: Redding Life Care, LLC

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The Environmental Protection Agency (''EPA'') is proposing to enter into a prospective purchaser agreement to address claims under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and further amended by the Hazardous and Solid Waste Amendments of 1984 (''RCRA''), 42 U.S.C. 6973. EPA is entering into this agreement under the authority of CERCLA Section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under Sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. Notice is being published to inform the public of the proposed settlement and of the opportunity for a public meeting in Redding, Connecticut and to comment on the proposed settlement. The settlement is intended to resolve the liability of Redding Life Care, LLC, under CERCLA and Section 7003 of RCRA for remedial activities Redding Life Care, LLC, will perform at the Gilbert & Bennett Site at 22 Redding

Road in Redding, Connecticut. The settlement has been approved by EPA Region I and the United States Department of Justice, subject to review by the public pursuant to this Notice. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate.

DATES: Comments on the proposed settlement and requests for a public meeting in Redding, Connecticut must be provided on or before April 27, 2000.

ADDRESSES: The proposed settlement is available for public inspection at the offices of EPA, Region I, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. A copy of the proposed settlement may be obtained from Eve S. Vaudo, U.S. Environmental Protection Agency, New England, Region I, One Congress Street, Suite 1100 (SES), Boston, Massachusetts 02114–2023, (617) 918–1089. Comments and requests for a public meeting should be addressed to Eve Vaudo at the address set forth above and should refer to: Agreement and Covenant Not to Sue Re: Gilbert & Bennett Site, U.S. EPA Docket No. CERCLA–1–99–0071.

FOR FURTHER INFORMATION CONTACT: Eve S. Vaudo, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02114–2023, (617) 918–1089.

Dated: December 2, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 00–7623 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

FRL–6564–1]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the 7–7 Merger, Inc., Superfund Site

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice; Request for public comment on proposed CERCLA 122(h)(1) agreement with Weitron Steel Corporation; USX Corporation; Sloss Industries Corporation; Shenango Incorporated; Roanoke Gas Company; Republic Technologies International, L.L.C.; Reilly Industries, Inc.; Premier Refractories, Inc.; North Star Steel Company; Granite City Division of National Steel Corporation; Lone Star Steel Company; Koppers Industries, Inc.; Kaiser Ventures, Inc.; Honeywell International, Inc. (f/k/a Allied Signal Inc.); Columbia Gas of Pennsylvania, Inc.; Coopers Creek Chemical Corporation; ENCOAL Corporation; Bethlehem Steel Corporation; Aristech Chemical Corporation, and; AK Steel Corporation for the 7–7 Merger, Inc., Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (''CERCLA''), EPA hereby gives notice of a proposed administrative agreement concerning the 7–7 Merger Inc., hazardous waste site at 607 Freelander Road, Wooster, Wayne County, Ohio (the ''Site''). EPA proposes to enter into this agreement under the authority of sections 106 and 122(h) of CERCLA. The proposed agreement has been executed by Weitron Steel Corporation; USX Corporation; Sloss Industries Corporation; Shenango Incorporated; Roanoke Gas Company; Republic Technologies International, L.L.C.; Reilly Industries, Inc.; Premier Refractories, Inc.; North Star Steel Company; Granite City Division of National Steel Corporation; Lone Star Steel Company; Koppers Industries, Inc.; Kaiser Ventures, Inc.; Honeywell International, Inc. (f/k/a Allied Signal Inc.); Columbia Gas of Pennsylvania, Inc.; Coopers Creek Chemical Corporation; ENCOAL Corporation; Bethlehem Steel Corporation; Aristech Chemical Corporation; and AK Steel Corporation (the ''Settling Parties'').

Under the proposed agreement, the Settling Parties are resolving EPA's claims against them for response actions and EPA response and oversight costs at the site. The Settling Parties are conducting an emergency response at the site and paying to the Hazardous Substances Superfund all past response costs and costs of overseeing the emergency response to the extent that these costs exceed $150,000. EPA incurred response costs mitigating an imminent and substantial endangerment to human health or the environment, present or threatened by hazardous substances at the site. EPA also incurred and will incur response costs overseeing response activities conducted and to be conducted at the site by the Settling Parties. EPA is compromising $150,000 of its response costs based on EPA's Orphan Share Policy.

For thirty days following the date this notice is published, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: EPA must receive comments on the proposed agreement before April 28, 2000.

ADDRESSES: You should address comments to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the 7–7 Merger, Inc., Site, Wooster, Ohio, U.S. EPA Docket No. V–W–00–C–584.

FOR FURTHER INFORMATION CONTACT: Stuart P. Hersh, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–6235.

You may obtain a copy of the proposed administrative settlement agreement in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Richard C. Karl,

Acting Director, Superfund Division, Region 5.

[FR Doc. 00–7626 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–109]

United States and Canada Reach Agreement Regarding Use of the 220—222 MHz Band Along Their Border

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the Federal Communications Commission, the National Telecommunications and Information Administration, and Industry Canada have signed an interim sharing Arrangement regarding use of the 220–222 MHz band along the United States -Canada Border. Now that the

Arrangement has been agreed upon, any non-nationwide Phase I 220 MHz licensee with a base station authorized at a location North of Line A must construct its base station and place it in operation, or commence service, on all authorized channels by January 21, 2001. The authorization of a licensee that does not construct its base station and place it into operation, or commence service, by January 21, 2001, cancels automatically on that date and must be returned to the Commission. United States licensees along the border whose construction deadlines had previously been delayed pending completion of this Arrangement between the United States and Canada are now required to complete construction and commence operation by January 21, 2001.

DATES: Effective January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta, Wireless Telecommunications Bureau, at (202) 418–1538; Henry Straube, International Bureau, at (202) 418–2144.

SUPPLEMENTARY INFORMATION: This *Public Notice,* reproduced without footnotes, was released January 21, 2000. It is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. The complete document is also available via the internet at *http://www.fcc.gov/Bureaus/Wireless/Public—Notices/2000/index2.html.*

Interim Sharing Agreement Reached Regarding Use of 220–222 MHz Band with Canada

The Federal Communications Commission, the National Telecommunications and Information Administration, and Industry Canada have signed an interim sharing Arrangement regarding use of the 220–222 MHz band along the U.S.-Canada border. The Arrangement will resolve long-standing uncertainty regarding use of this band in the border area. In addition, by significantly reducing the amount of cross-border coordination required, the Arrangement will allow quick implementation of new services expected to be offered in the band. U.S. licensees along the border whose construction deadlines had previously been delayed pending completion of a U.S.-Canada agreement will now be required to complete construction and commence operation by January 21, 2001.

The Arrangement governs operations in the 220–222 MHz band within 120 kilometers of the U.S.-Canada border. The Arrangement identifies 200 channel pairs within this band and allots each channel pair for primary use by the United States or Canada, or for shared use. Frequencies allotted for primary use by one country may also be used on a secondary basis by the other country provided certain conditions are met. The Arrangement also provides antenna height and power restrictions, and there are special sharing arrangements for certain geographic areas and for low power stations. In addition, the Arrangement provides that, to the extent possible, certain specified channels will be available for implementation of Intelligent Transportation Systems/Intelligent Vehicle Highway System and Public Safety and Mutual Aid services. Beyond 120 kilometers from the border, both countries have full and unrestricted use of all channels in the band.

In commenting on the Arrangement, International Bureau Chief Donald Abelson stated, ''This Arrangement builds on the strong cooperative relationship between the U.S. and Canada and encourages prompt provision of new services to the citizens on both sides of the border while protecting licensees and consumers from cross-border interference.'' This Arrangement was reached as part of an on-going Commission effort to negotiate sharing agreements with Canada and Mexico that will promote efficient spectrum use in border areas.

In 1995, the Commission extended the construction deadline for non-nationwide Phase I 220 MHz licenses that were located north of Line A, near the Canadian border, due to the uncertainties surrounding the future of these licenses prior to reaching an agreement with Canada. The construction period was extended until twelve months after an agreement was reached between the United States and Canada on sharing the 220–222 MHz band. Now that the Arrangement has been realized, any non-nationwide Phase I 220 MHz licensee with a base station authorized at a location north of Line A must construct its base station and place it into operation, or commence service, on all authorized channels by January 21, 2001. The authorization of a licensee that does not construct its base station and place it into operation, or commence service, by January 21, 2001, cancels automatically on that date and must be returned to the Commission.

The full text of the Arrangement has been placed on file at the International Bureau Reference Room CY-A257, located on the Courtyard level of 445 12th St. S.W., Washington, D.C. Copies are also available from the International Transcription Service at (202) 857–3800 and can be downloaded from the FCC's International Bureau internet site at *http://www.fcc.gov/ib/pnd/agree.*

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 00–7597 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice

FEDERAL REGISTER CITATION OF PREVIOUS NOTICE: 65 FR 14977, March 20, 2000.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 P.M., Wednesday, March 22, 2000.

CHANGE IN THE MEETING. The time and location of the above mentioned meeting was changed to 2:30 p.m., Wednesday, March 22, 2000 and held at 2222 Rayburn House Office Building, Independence Avenue and South Capitol Street, SW, Washington, DC 20515.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–7770 Filed 3–24–00; 4 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Benchmark Bancorp, Inc., Aurora, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Financial Institutions Inc., Port Washington, Wisconsin, and thereby indirectly acquire Valley Bank, Verona, Illinois.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Hopkins Financial Corporation, Mitchell, South Dakota; to merge with The First Freeman Corporation, Freeman, South Dakota, and thereby indirectly acquire The First National Bank of Freeman, Freeman, South Dakota.

Board of Governors of the Federal Reserve System, March 23, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7605 Filed 3–27–00; 8:45 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, April 3, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Proposals concerning renovation of a Federal Reserve Bank building.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7772 Filed 3–24–00; 3:59 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: General Services Administration.

ACTION: Notice of a new system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) is providing notice of the establishment of a new system of records, Child Care Subsidy (GSA/ChildCare-1). The new system will collect family income data from GSA employees for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, e.g., that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees.

DATES: Comments on the new system must be provided April 27, 2000. The system will become effective without further notice on April 27, 2000, unless comments dictate otherwise.

ADDRESSES: Address comments to: General Services Administration, Office of Child Care (D), 1800 F Street, NW, Washington, DC 20405; or to GSA Privacy Act Officer, General Services Administration, CAI, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: The Office of Child Care, at the above address, or telephone (202) 208–5119.

GSA/Childcare-1

SYSTEM NAME:

GSA CHILD CARE SUBSIDY.

SYSTEM LOCATION:

This system of records is maintained by the Office of Child Care (D), 1800 F Street, NW, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the General Services Administration who voluntarily apply for child care subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for child care subsidy containing personal information, including employee (parent) name, Social Security Number, grade, home and work numbers addresses, telephone numbers, total income, number of dependent children, and number of children on whose behalf the parent is applying for a subsidy; information on child care providers used, including name, address, provider license number and State where issued, tuition cost, and provider tax identification number; and copies of IRS Form 1040 and 1040A for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–58 and E.O. 9397.

PURPOSE(S):

To establish and verify GSA employees' eligibility for child care subsidies in order for GSA to provide monetary assistance to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed as a routine use:

a. To the Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

c. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of the subsidy program.

e. To an expert, consultant, or contractor (including employees of the contractor) of GSA if necessary to further the implementation and operation of this program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

By name; may also be cross-referenced to Social Security Number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable metal file cabinets or secured rooms. Electronic records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2) and authorized GSA records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Child Care (D), General Services Administration, 1800 F St., NW, Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to: Associate Administrator for Child Care (D), General Services Administration, 1800 F St., NW, Washington, DC 20405.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register,** 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is provided by GSA employees who apply for child care subsidies. Furnishing of the information is voluntary.

Dated: March 21, 2000.

Daniel K. Cooper,

Director, Administrative Services Division.

[FR Doc. 00–7509 Filed 3–27–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality (AHRQ); Statement of Organization, Functions, and Delegations of Authority

Part E, Chapter E (Agency for Health Care Policy and Research), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 15955–58, April 10, 1996, most recently amended at 64 FR 11012–15 on march 8, 1999) is further amended to reflect organizational changes necessitated by the enactment of the Healthcare Research and Quality Act of 1999, Public Law 106–129. The Act retitled the Agency for Health care Policy and Research (AHCPR) as the Agency for Healthcare Research and Quality (AHRQ); and changed the title of the Administrator to Director. The changes are as follows:

1. All references to the Agency for Health Care Policy and Research (AHCPR) are hereby changed to the Agency for Healthcare Research and Quality (AHRQ); and all references to AHCPR are changed to AHRQ.

2. All references to the AHCPR ''Administrator'' are changed to the AHRQ ''Director.''

3. Under Section E–20, Functions, in the statement for the Center for Practice and Technology Assessment (EM), delete item (6) in its entirety.

These changes are effective upon date of signature.

Dated: March 21, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–7521 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for State/Territories.

OMB No.: 0970–0114.

Description: The ACF–118, the Child Care and Development (CCDF) Plan for States and Territories, is required from the child care lead agency by section 658E of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858). The implementing regulations for the Statutorily required Plan are at 45 CFR 98.10 through 98.19. The Plan is required biennially and remains in effect for two years. States/Territories have completed the ACF–118 for the FFY 2000–2001 biennium. However, approval for the ACF–118 expires May 31, 2000. States and Territories may amend during a biennium. Therefore, in order to provide continually for the Plan process, ACF is requesting that the current approval of the ACF–118 be extended through the end of the biennium, *i.e.,* September 30, 2001. The Tribal Plan (ACF–118A) is not affected by this notice.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Care & Dev. Fund Plan for States/Terr	56	.5	162.57	4,552
Estimated Total Annual Burden Hours				4,552

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: March 22, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–7520 Filed 3–27–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79F–0401]

Thomas J. Lipton, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0A3481) proposing that the food additive regulations be amended to provide for the safe use of methylene chloride as a solvent for decaffeinating tea.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3110.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 23, 1979 (44 FR 67231), FDA announced that a food additive petition (FAP 0A3481) had been filed by Thomas J. Lipton, Inc., 800 Sylvan Ave., Englewood Cliffs, NJ 07632. The petition proposed that the food additive regulations be amended to provide for the safe use of methylene chloride as a solvent for decaffeinating tea. Thomas J. Lipton, Inc., an operating division of Unilever, the successor to Thomas J. Lipton, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 15, 2000.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7538 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P–4209]

Determination That Hydrocodone Bitartrate and Acetaminophen Tablets USP, 5 Milligrams/325 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that hydrocodone bitartrate and acetaminophen tablets USP, 5 milligrams (mg)/325 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for this drug product.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments) authorizes the approval, under an abbreviated procedure, of duplicate versions of previously approved drug products. Sponsors of ANDA's do not have to repeat the extensive clinical testing necessary to gain approval of a new drug application (NDA). An ANDA sponsor must, with certain exceptions, show that the drug for which approval is sought contains the same active ingredient(s) in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is commonly referred to as the ''Orange Book.'' Drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Also, before an ANDA that refers to a listed drug may be approved, the agency must determine whether the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

Mallinckrodt, Inc., submitted a citizen petition dated September 27, 1999 (Docket No. 99P–4209/CP1), under 21 CFR 10.30(b) and 314.122(a), requesting that the agency determine whether hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, were withdrawn from sale for reasons of safety or effectiveness and, if not, to keep the drug in the Orange Book. Hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, are the subject of ANDA 40–099 held by UCB Pharma, Inc. ANDA 40–099 was approved on June 8, 1987, but the product was never marketed. FDA has determined, for purposes of §§ 314.161 and 314.162(c), that never marketing an approved drug product is equivalent to withdrawing the drug from sale.

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, were not withdrawn from sale for reasons of safety or effectiveness. FDA will, therefore, continue to list this product in the Orange Book's ''Discontinued Drug Product List,'' which lists, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, may be approved by the agency.

Dated: March 20, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7542 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1198]

John J. Ferrante et al.; Proposal to Withdraw Approval of 158 Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on the agency's proposal to withdraw approval of 158 abbreviated new drug applications (ANDA's). The basis for the proposal is that the sponsors have repeatedly failed to file required annual reports for these applications.

DATES: Submit written requests for a hearing by April 27, 2000; submit data and information in support of the hearing request by May 30, 2000.

ADDRESSES: Requests for a hearing, supporting data, and other comments are to be identified with Docket No. 00N–1198 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81). The holders of the applications listed in the following table have failed to submit the required annual reports and have not responded to the agency's request by certified mail for submission of the reports.

ANDA No.	Drug	Applicant
60–058	Chloramphenicol Capsules, 250 milligrams (mg).	John J. Ferrante, c/o Operations Management Consulting, 11 Fairway Lane, Trumbull, CT 06611.
60–062	Penicillin G Potassium.	The Upjohn Co., 700 Portage Rd., Kalamazoo, MI 49001.
60–094	Sterile Penicillin G Procaine Suspension USP.	Do.
60–110	Sterile Dihydrostreptomycin Sulfate USP.	Pfizer Central Research, Pfizer, Inc., Eastern Point Rd., Groton, CT 06340.
60–170	Penicillin G Potassium Tablets, 200,000, 250,000, and 400,000 units.	John J. Ferrante.
60–173	Tetracycline Hydrochloride (HCl) Capsules, 250 mg.	Do.
60–174	Tetracycline Oral Suspension, 125 mg/5 milliliters (mL).	Do.
60–177	Bacitracin-Neomycin Sulfate Polymyxin B Sulfate Ointment.	Do.
60–178	Bacitracin-Neomycin Sulfate Ointment.	Do.
60–179	Oxytetracycline HCl Capsules, 250 mg.	Do.
60–188	Neomycin Sulfate and Hydrocortisone Actetate Ophthalmic Suspension USP.	Akorn, Inc., c/o Walnut Pharmaceuticals, Inc., 1340 North Jefferson St., Anaheim, CA 92807.
60–360	Neomycin and Polymyxin B Sulfate and Bacitracin Ointment with Benzocaine.	Ambix Laboratories, 210 Orchard St., East Rutherford, NJ 07073.
60–435	Tetracycline HCl Tablets USP, 250 mg.	Farmitalia Carlo Erba S.p.A., c/o Montedison, USA, Inc., 1114 Avenue of the Americas, New York, NY 10036.
60–453	Neomycin and Polymyxin B Sulfate and Bacitracin Ointment with Diperodon HCl.	Ambix Laboratories.
60–464	Neomycin Sulfate and Prednisolone.	The Upjohn Co.
60–647	Neo-Polycin Opthalmic Ointment.	Merrell Dow Pharmaceuticals, Inc., P.O. Box 68511, Indianapolis, IN 46268.
60–666	Ampicillin Tihydrate for Oral Suspension.	Beecham Laboratories, 501 Fifth St., Bristol, TN 37620.
60–690	Oxytetracycline HCl.	Pierrel America, Inc., 576 Fifth Ave., New York, NY 10036.
60–720	Tetracycline HCl Capsules, 250 mg.	Towne Paulsen & Co., Inc., 140 East Duarte Rd., Monrovia, CA 91016.
60–757	Polymyxin B Sulfate, 500,000 units.	Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
60–774	Griseofulvin Tablets, 500 mg.	McNeil Consumer, Inc., Camp Hill Rd., Fort Washington, PA 19034.
60–809	Penicillin G Potassium Tablets USP, 100,000, 200,000, 250,000, 400,000, and 500,000 units.	Consolidated Pharmaceutical Group, 6110 Robinwood Rd., Baltimore, MD 21225.
60–855	Oxytetracycline HCl Capsules, 250 mg.	Rachelle Laboratories, Inc., 700 Henry Ford Ave., P.O. Box 2029, Long Beach, CA 90801.
60–869	Oxytetracycline HCl Capsule, 250 mg.	Proter S.p.A., c/o Arnold Buhl Christen, 1000 Connecticut Ave., Washington, DC 20086.
61–174	Candicidin.	Penick Corp., 1050 Wall St. West, Lyndhurst, NJ 07071.
61–396	Hetacillin Capsules.	Bristol-Myers, U.S. Pharmaceutical Group, Evansville, IN 47721–0001.
61–523	Tetracycline HCl Susceptibility Power, 20 mg.	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965.
61–676	Ampicillin Trihydrate Capsules, 250 mg and 500 mg.	Public Health Service, Health Service Administration, Perry Point, MD 21902.
61–700	Bacitracin Zinc USP for Compounding.	Alpharma A.S., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024.
61–718	Nystatin Vaginal Tablets USP, 100,000 units.	Holland-Rantos Co., Inc., 310 Enterprise Ave., Trenton, NJ 08638.
61–720	Doxycycline Oral Suspension USP.	Rachelle Laboratories, Inc.

ANDA No.	Drug	Applicant
61–933	Penicillin G Potassium for Injection USP.	E.R. Squibb & Sons, P.O. Box 191, New Brunswick, NJ 08903–0191.
61–953	Doxycycline Hyclate Injection.	Rachelle Laboratories, Inc., P.O. Box 187, Culver, IN 46511.
61–957	Benzylpenicilloyl Polylysine Injection.	Kremers-Urban Co., 5600 West County Line Rd., P.O. Box 2038, Milwaukee, WI 53201.
61–961	Bacitracin Ointment USP.	Clay-Park Labs, Inc., 1700 Bathgate Ave., Bronx, NY 10457.
61–994	Kanamycin Sulfate Injection USP.	Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 657, Syracuse, NY 13201.
62–007	Bacitracin USP, 50,000 and 10,000 units/vial.	Alpharma A.S., c/o Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024.
62–042	Chloramphenicol Ophthalmic Solution, 0.5%.	Akorn, Inc.
62–138	Cefoxitin Solution.	Pfizer Pharmaceuticals, Inc., 235 East 42d St., New York, NY 10017.
62–224	Neomycin Sulfate Ointment.	Clay-Park Labs, Inc.
62–236	Bacitracin Ointment USP.	Denison Laboratories, Inc., 60 Dunnell Lane, P.O. Box 1305, Pawtucket, RI 02862.
62–248	Gentamicin Sulfate Injection USP.	The Upjohn Co.
62–345	Tetracycline HCl Capsules, 250 mg.	Public Health Service, HAS Supply Service Center, Perry Point, MD 21902.
62–354	Gentamicin Sulfate Injection USP.	Kalapharm, Inc., 145 East 27th St., New York, NY 10016.
62–357	Amoxicillin Trihydrate Capsules, 250 mg and 500 mg.	Public Health Service, HAS Supply Service Center.
62–359	Bacitracin Topical Ointment, 500 units/gram.	NMC Laboratories, Inc., 70–36 83d St., Glendale, NY 11385.
62–361	Bacitracin-Neomycin-Polymyxin B Sulfate.	Do.
62–528	Amoxicillin Capsules USP, 250 mg and 500 mg.	Laboratories Atral, S.A., c/o Louie F. Turner, P.O. Box 331044, Fort Worth, TX 76133–2924.
62–538	Doxycycline Hyclate Tablets USP, 100 mg.	Vintage Pharmaceuticals, Inc., 3241 Woodpark Blvd., Charlotte, NC 28206.
71–278	PEG 3350 and Electrolytes for Oral Solution USP.	E–Z–EM, Inc., 717 Main St., Westbury, NY 11590.
71–320	PEG 3350 and Electrolytes for Oral Solution USP.	DynaPharm, Inc., P.O. Box 2141, Del Mar, CA 92014.
71–419	Chlorhexidine Gluconate Topical Solution 4%.	Hygenics Pharmaceuticals, Inc., 26941 Cabot Rd., suite 128, Laguna Hills, CA 92653.
71–639	Ibuprofen Tablets USP, 200 mg.	Vintage Pharmaceuticals, Inc.
71–644	Ibuprofen Tablets USP, 400 mg.	Do.
71–777	Clorazepate Dipotassium Capsules, 3.75 mg.	Able Laboratories, 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
71–778	Clorazepate Dipotassium Capsules, 7.5 mg.	Do.
71–779	Clorazepate Dipotassium Capsules, 15 mg.	Do.
72–319	Glycoprep (PEG 3350 and Electrolytes for Oral Solution).	Goldline Laboratories, 1900 West Commerical Blvd., Ft. Lauderdale, FL 33309.
72–399	Sulfamethoxazole and Trimethorprim Oral Suspension USP.	NASKA Pharmacal Co., Inc., P.O. Box 898 Riverview Rd., Lincolnton, NC 28093.
72–409	Nifedipine Capsules USP, 10 mg.	Chase Laboratories, Inc., 280 Chestnut St., Newark, NJ 07105.
73–421	Nifedipine Capsules USP, 20 mg.	Do.
74–080	Carbidopa and Levodopa Tablets USP, 10 mg/100 mg, 25 mg/100 mg, and 25 mg/250 mg.	SCS Pharmaceuticals, 4901 Searle Pkwy., Skokie, IL 60077.
80–094	Triple Sulfoid Tablets.	Pal-Pak, Inc., 1201 Liberty St., Allentown, PA 18102.
80–117	Nitrofurantoin Tablets, 50 mg.	Rachelle Laboratories, Inc., 700 Henry Ford Ave., P.O. Box 2029, Long Beach, CA 90801.
80–118	Nitrofurantoin Tablets, 100 mg.	Do.
80–335	Prednisolone Tablets, 5 mg.	Central Pharmaceutical, Inc., 110–128 East Third St., Seymour, IN 47274.
80–375	Lidocaine HCl Injection USP, 2%.	Rachelle Laboratories, Inc.
80–376	Lidocaine HCl Injection USP, 1%.	Do.
80–481	Hydrocortisone Ointment USP.	C & M Pharmacal, Inc., 1721 Maple Lane, Hazel Park, MI 48030–1215.
80–482	Hydrocortisone Cream USP.	Do.
80–562	Prednisolone Tablets, 2.5 mg and 5 mg.	John J. Ferrante.
80–568	Hydrocortisone Tablets, 10 mg and 20 mg.	Do.
80–967	Vitamin A Capsules USP.	West-Ward, Inc., 465 Industrial Lane, Eatontown, NJ 07724.
81–008	Chlorzoxazone Tablets USP, 500 mg.	Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220.
83–102	Vitamin D Capsules, 50,000 units.	West-Ward, Inc.
83–156	Hydrocortisone Acetate Cream, 1.0%.	Parke-Davis, Div. of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
83–161	Dexamethasone Sodium Phosphate Injection.	Dell Laboratories, Inc., 668 Front St., Teaneck, NJ 07666.
83–358	Prednisolone Sodium Phosphate Ophthalmic Solution USP.	Akorn, Inc.
83–400	Propoxyphene HCl Capsules USP, 65 mg.	Rachelle Laboratories, Inc.
83–643	Acetaminophen and Codeine Phosphate Tablets, 325 mg/30 mg.	Carnrick Laboratories, Inc., 65 Horse Hill Rd., Cedar Knolls, NJ 07927.
83–682	Phendimetrazine Tartrate Tablets USP, 35 mg (yellow).	Zenith Laboratories, Inc., 140 Legrand Ave., Northvale, NJ 07647.
83–787	Chlorpheniramine Maleate Tablets, 4 mg.	West-Ward, Inc.

ANDA No.	Drug	Applicant
83–790	Phendimetrazine Tartrate Tablets USP, 35 mg.	Numark Laboratories, Inc., 75 Mayfield Ave., Edison, NJ 08837.
83–791	Nitrofurazone Powder.	Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, NJ 07724.
83–829	Chlorpromazine HCl Tablets USP.	Rachelle Laboratories, Inc.
83–977	Selenium Sulfide.	USV Pharmaceutical Corp., One Scarsdale Rd., Tuckahoe, NY 10707.
84–030	Meprobamate Tablets, 400 mg	Ferndale Laboratories, Inc.
84–185	Bethanechol Chloride Tablets, 10 mg.	Wendt Laboratories, Inc., 100 Nancy Dr., P.O. Box 128, Belle Plaine, MN 56011.
84–186	Bethanechol Chloride Tablets, 25 mg.	Do.
84–255	Sulfasalazine Tablets, 500 mg.	William H. Rorer, Inc., 500 Virginia Dr., Fort Washington, PA 19034.
84–337	Sulfisoxasole Tablets, 500 mg.	Rachelle Laboratories, Inc.
84–377	Prednisone Capsules, 50 mg.	R. P. Scherer Corp., 2725 Scherer Dr., St. Petersburg, FL 33702.
84–492	Prednisolone Acetate Injection.	Akorn, Inc.
84–563	Aminophylline Tablets, 200 mg.	ICN Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213.
84–639	Chlordiazepoxide HCl Capsules USP, 10 mg.	Rachelle Laboratories, Inc.
84–727	Lidocaine HCl Injection 2%.	Pharmaton, Inc., 150 East 58th St., New York, NY 19155.
84–728	Lidocaine HCl Injection, 2% with Epinephrine 1:50,000.	Pharmaton, Inc., c/o Bass, Ullman & Lustrigman, 747 Third Ave., New York, NY 10017.
84–855	Dexamethasone Sodium Phosphate Ophthalmic Solution USP, 0.1%.	Akorn, Inc.
85–039	Folic Acid Tablets USP, 1 mg.	Wendt Laboratories, Inc.
85–040	Isoniazed Tablets USP, 100 mg.	Do.
85–041	Meclizine HCl Tablets, 25 mg.	Do.
85–042	Methocarbamol Tablets USP, 500 mg.	Do.
85–044	Reserpine Tablets USP, 0.25 mg.	Do.
85–086	Chlordiazepoxide HCl Capsules, 5 mg.	Rachelle Laboratories, Inc.
85–087	Chlordiazepoxide HCl Capsules USP, 25 mg.	Do.
85–091	Isoniazid Tablets USP, 100 mg.	Pharmavite Corp., 15451 San Fernando Mission Blvd., P.O. Box 9606, Mission Hills, CA 91346–9606.
85–104	Chlorpheniramine Maleate Tablets USP, 4 mg.	Do.
85–118	Chlordiazepoxide HCl Capsules, 5 mg.	John J. Ferrante.
85–119	Chlordiazepoxide HCl Capsules, 10 mg.	Do.
85–120	Chlordiazepoxide HCl Capsules, 25 mg.	Do.
85–341	Butabartital Sodium Tablets USP, 30 mg.	Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18102.
85–345	Butabartital Sodium Tablets USP, 15 mg.	Do.
85–477	Secobarbital Sodium Capsules, 100 mg.	ICN Pharmaceuticals, Inc., 222 North Vincent Ave., Covina, CA 91722.
85–509	Diphenoxylate HCl and Atropine Sulfate Tablets USP, 2.5 mg/0.025 mg.	Inwood Laboratories, Inc., Subsidiary of Forest Labs, Inc., 150 East 58th St., New York, NY 10155.
85–539	Triamcinolone Acetonide Cream USP, 0.1%, 0.5%, and 0.025%.	Zenith Goldline Pharmaceuticals, Inc.,
85–630	Trichlormethiazide Tablets, 4 mg.	Lannett Co., Inc., 9000 State Rd., Philadelphia, PA 19136.
85–733	Hydrocortisone Cream USP, 1%.	Zenith Goldine Pharmaceuticals, Inc.
85–777	Selenium Sulfide USP.	Do.
85–851	Imipramine HCl Tablets USP, 25 mg.	A. H. Robins Co., 1407 Cummings Dr., P.O. Box 26609, Richmond, VA 23261–6609.
86–116	Phendimetrazine Tartrate Tablets, 17.5 mg.	Camall Co., P.O. Box 218, Washington, MI 48094.
86–129	Heparin Sodium Injection USP, 1,000 units/mL.	Pharma-Serve, Inc., 218–20 98th Ave., Queens Village, NY 11429.
86–543	Diphenhydramine HCl Capsules, 25 mg.	Newtron Pharmaceuticals, Inc., 155 Knickerbocker Ave., Bohemia, NY 11716.
86–544	Diphenhydramine HCl Capsules, 50 mg.	Do.
86–766	Nitrofurazone Ointment 0.2%.	Wendt Laboratories, Inc.
87–081	Nitrofurazone Solution 0.2%.	Do.
87–328	Trifluoperazine HCl Tablets USP, 5 mg.	Zenith Goldline Pharmaceuticals, Inc.
87–375	Triamcinolone Acetonide Ointment USP, 0.025%.	Do.
87–376	Triamcinolone Acetonide Ointment USP, 0.5%.	Do.
87–377	Triamcinolone Acetonide Ointment USP, 0.1%.	Do.
87–427	Hydrocortisone Cream USP, 1%.	Do.
87–428	Triamcinolone Acetonide Cream USP, 0.5%.	Do.
87–429	Triamcinolone Acetonide Cream USP, 0.1%.	Do.
87–430	Triamcinolone Acetonide Cream USP, 0.025%.	Do.
87–489	Hydrocortisone Lotion USP, 1%.	Heran Pharmaceutical, Inc., 7215 Eckhert Rd., San Antonio, TX 78238.
87–612	Trifluoperazine HCl Tablets USP, 1 mg.	Zenith Goldline Pharmaceuticals, Inc.
87–613	Trifluoperazine HCl Tablets USP, 2 mg.	Do.
87–614	Trifluoperazine HCl Tablets USP, 10 mg.	Do.

ANDA No.	Drug	Applicant
87–628	Butalbital, Acetaminophen, and Caffeine Capsules, 50 mg/325 mg/40 mg.	Roberts/Hauck Pharmaceuticals, Inc., Six Industrial Way West, Eatontown, NJ 07724.
87–818	Sulfacetamide Sodium Ophthalmic Solution, 10%.	Bausch & Lomb Pharmaceuticals, 8500 Hidden River Pkwy., Tampa, FL 33637.
87–834	Hydrocortisone USP (micronized powder).	Torch Laboratories, Inc., P.O. Box 248, Reisterstown, MD 21136.
87–865	Chlorpromazine HCl Tablets, 25 mg.	West-Ward, Inc.
88–024	Phendimetrazine Tartrate Extended-Release Capsules, 105 mg.	Numark Laboratories, Inc., 75 Mayfield Ave., Edison, NJ 08837.
88–059	Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension USP, 10%/0.5%.	Akorn, Inc.
88–089	Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension USP, 10%/0.5%.	Bausch & Lomb Pharmaceuticals.
88–189	Reserpine and Hydrochlorthiazide Tablets USP, 0.125 mg/50 mg.	West-Ward, Inc.
88–255	Theophylline Sustained-Release Capsules, 300 mg.	R. P. Scherer North America, P.O. Box 5600, Clearwater, FL 33518.
88–393	Hydroxyzine Pamoate Capsules, 50 mg.	Vanguard Labs, Packaging Div. of MWM Corp., 101–107 Samson St., P.O. Box K, Glasgow, KY 42141.
88–447	Tropicamide Ophthalmic Solution USP, 1%.	Akorn, Inc.
88–474	Triprolidine HCl and Pseudoephedrine HCl, 1.25 mg/5 mL and 30 mg/5 mL.	Newtron Pharmaceuticals, Inc.
89–268	Butalbital and Acetaminophen Capsules, 50 mg/325 mg.	Dunhall Pharmaceuticals, Inc., P.O. Box 100, Gravette, AR 72736.
89–273	Hydrocortisone Cream USP, 1.0%.	Topiderm, Inc., 155 Knickerbocker Ave., Bohemia, NY 11716.
89–274	Triamcinolone Acetonide Cream USP, 0.025%.	Do.
89–275	Triamcinolone Acetonide Cream USP, 0.1%.	Do.
89–276	Triamcinolone Acetonide Cream USP, 0.5%.	Do.
89–495	Hydrocortisone Lotion USP, 1%.	Beta Dermaceuticals, Inc., 5419 Bandera Rd., suite 708, San Antonio, TX 78238.
89–805	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/30 mg.	Vintage Pharmaceuticals, Inc.
89–828	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/60 mg.	Do.
89–990	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/15 mg.	Do.

Therefore, notice is given to the holders of the applications listed in the table and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) withdrawing approval of the applications and all amendments and supplements thereto on the ground that the applicants have failed to submit reports required under § 314.81.

In accordance with section 505 of the act and 21 CFR part 314, the applicants are hereby provided an opportunity for a hearing to show why the applications listed previously should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products covered by these applications.

An applicant who decides to seek a hearing shall file: (1) On or before April 27, 2000, a written notice of participation and request for a hearing, and (2) on or before May 30, 2000, the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of an applicant to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the applications and the drug products may not thereafter lawfully be marketed, and FDA will begin appropriate regulatory action to remove the products from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 314.81. If the submission is not complete or if a request for a hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure under section 301 of the act (21 U.S.C. 331(j)) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director,

Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: March 13, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–7589 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 4, 2000, 8 a.m. to 6 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: There will be a brief FDA presentation on the least burdensome provisions of the FDA Modernization Act of 1997. Subsequently, the committee is being asked to provide input to the agency regarding the design of clinical trials for the following: (1) Devices using spinal cord stimulation in the treatment of angina pectoris; (2) rate-responsive pacemakers, specifically, the evaluation of rate-adaptive features; and (3) devices used in the treatment of atrial fibrillation. Background information, questions for the panel, and a bibliography for each topic to be discussed by the committee are available to the public on the Internet at http://www.fda.gov/cdrh/upadvmtg.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 28, 2000. Oral presentations from the public will be scheduled between approximately 8 a.m. and 9 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 28, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the April 4, 2000, Circulatory System Devices Panel of the Medical Device Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Circulatory System Devices Panel were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–7543 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Program Announcement, including Part I, Programmatic Guidance for Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing an application.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated No. of Awards	Project period
PRC Implementation Program	June 13, 2000	$3,000,000	8–10	Up to 3 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA will publish additional notices of available funding opportunities for FY 2000 in subsequent issues of the **Federal Register**.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*, (* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Applications sent to an address other than the address specified above will be returned to the applicant without review.

Application Deadlines

The deadline for receipt of applications is listed in the table above. Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the deadline date will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3). Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

2. Criteria for Review and Funding

2.1 General Review Criteria

Competing applications requesting funding under the specific project activity in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Cooperative Agreement to Bridge the Gap: Phase II Implementation of Community-Based Practice/Research Collaboratives (Short Title: PRC Implementation Program) number TI 00–004.

- *Application Deadline:* June 13, 2000.
- *Purpose:* The overall purpose of the PRC program is to improve the quality of substance abuse treatment by increasing interaction and knowledge exchange among key community based stakeholders, including substance abuse treatment providers, community-based organizations providing support services to substance abusers, researchers, and policy makers, including health plan managers and purchasers of substance abuse treatment. Prior to the Implementation Phase of the program, it is expected that the PRCs will have developed the necessary infrastructure and capacity to conduct knowledge development and application studies to be able to participate effectively in federally-funded research efforts. Through these efforts, the PRCs will be able, over time, to make significant contributions to the field's knowledge and understanding about substance abuse treatment.

In order to accomplish the goals of the Phase II PRC Implementation Program, applicants are required to have met the following criteria: (1) An operational, community based PRC has been established in which providers participate as full partners with researchers, policy makers and other stakeholder groups; (2) a formal organizational structure and statement of operating procedures, roles and responsibilities of stakeholder members and designated consumer representative has been developed and endorsed by stakeholder groups; (3) a formal needs assessment of PRC stakeholders has been conducted and utilized to establish a consensus based research and knowledge application agenda and implementation plan; and (4) stakeholders have endorsed the implementation plan.

- *Eligible Applicants:* Applications for Implementation Cooperative Agreements may be submitted by domestic public and private nonprofit and for-profit entities, such as community-based organizations, public or private universities, colleges, and hospitals, units of State or local government, and Indian Tribes and tribal organizations.
- *Amount:* It is estimated that $3.0 million will be available to support approximately 8–10 Implementation awards under this program in FY 2000. Awards are expected to range from $300,000—$400,000 per year in total costs (direct+indirect).
- *Period of Support:* Support may be requested for a period of up to three years. Annual awards will be made subject to continued availability of funds and progress achieved.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• *Program Contact:* For questions concerning program issues, contact: Frances Cotter, Project Officer, Office of Managed Care, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8796.

• *For questions regarding grants management issues, contact:* Christine Chen, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8926.

• *Application kits are available from:* National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

4. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

5. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 12, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–7544 Filed 3–27–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Grant Programs Technical Assistance Workshops; Notice of Meetings

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of Technical Assistance Sessions for Potential Applicants for the SAMHSA/CSAT Grant Program: TI 00–004—''Cooperative Agreement to Bridge the Gap: Phase II Implementation of Community-Based Practice/Research Collaboratives.

Notice is hereby given for the following technical assistance sessions to be provided to prospective applicants for SAMHSA/CSAT Guidance for Applicants (GFA) TI 00–004. The text of the grant announcement can be downloaded from the SAMHSA Web Site at www.samhsa.gov or ordered from the National Clearinghouse for Alcohol and Drug Information (NCADI) at (800) 729–6686.

The technical assistance sessions will be held as follows: Session I—April 5, 2000, 1–3 p.m., 7th Floor Conference Room, Rockwall II Building, Center for Substance Abuse Treatment, 5515 Security Lane, Rockville, MD 20852; Session II—April 12, 2000, 3–5 p.m., Hilton New Orleans Riverside, New Orleans, LA. Each two-hour session will follow the following format: (1) Presentation of the key components of the GFA, and (2) question and answer session.

Potential applicants are strongly encouraged to review the grant announcement prior to attending a technical assistance session to determine if they meet the capability criteria listed below for the implementation phase. Applications may be submitted by domestic public and private non-profit and for-profit entities such as community-based organizations, public or private universities, colleges, and hospitals, and units of State or local government. In order to accomplish the goals of the Phase II PRC Implementation Program, applicants are required to have met the following criteria: (1) An operational, community based PRC has been established in which providers participate as full partners with researchers, policy makers and other stakeholder groups; (2) a formal organizational structure and statement of operating procedures, roles and

responsibilities of stakeholder members and designated consumer representative has been developed and endorsed by stakeholder groups; (3) a formal needs assessment of PRC stakeholders has been conducted and utilized to establish a consensus based research and knowledge application agenda and implementation plan; and (4) stakeholders have endorsed the implementation plan.

There is no registration fee for the sessions. Preregistration is encouraged. Registrants are responsible for costs associated with their own travel, meals and lodging. To preregister and for logistical assistance, please contact Un Lee, Tascon, Inc., (301) 315–9000. Session confirmation will be faxed.

Dated: March 21, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–7545 Filed 3–27–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Washington Coast National Wildlife Refuges (Refuges), Which Are Located in Clallam, Jefferson, and Grays Harbor Counties, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and associated environmental assessment.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and an associated environmental assessment for the Washington Coast National Wildlife Refuges (Refuges), which are composed of Flattery Rocks National Wildlife Refuge (NWR), Quillayute Needles NWR, and Copalis NWR, located in Clallam, Jefferson, and Grays Harbor Counties, Washington. The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Submit comments on issues to include on or before April 29, 2000.

ADDRESSES: Address comments and requests for more information, to be put on the mailing list, or for a copy of the most recent planning update to: Refuge Manager, Washington Maritime National Wildlife Refuge Complex, 33 S. Barr Road, Port Angeles, Washington, 98362, or call the Complex at (360) 457–8451. Submit faxes to (360) 457-9778. If you choose to submit comments via electronic mail, visit our Pacific Region Planning Website: *http://www.r1.fws.gov/planning/plnhome.html*. Please send these comments using the ''Guest Mailbox'' provided at that site.

FOR FURTHER INFORMATION CONTACT: Refuge Manager Kevin Ryan at the address and phone number above.

SUPPLEMENTARY INFORMATION: The Washington Coast NWRs (Flattery Rocks, Quillayute Needles, and Copalis NWRs), were established in 1907 by Theodore Roosevelt for the purpose of being ''a preserve and breeding ground for native birds and animals'' (Executive Orders 703, 704, and 705). These three Refuges extend over 100 miles along the outer coast of Washington State and include more than 600 rocks, reefs, and islands. Approximately 80% of the seabirds in the State nest within the Refuges. It was the original intent, with the establishment of the Refuges, to preserve these islands in a natural condition and to minimize human intrusion. As such, all islands are closed to public entry. Because of the physical characteristics of these islands, landings and access are extremely hazardous. On October 23, 1970, the Washington Islands Wilderness was established by Public Law 92–504. This placed all the islands, except for Destruction and James Islands, under wilderness designation.

It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. This CCP will guide management decisions and identify Refuge goals, long-range objectives, and strategies for achieving Refuge purposes. Public input into this planning process is encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies over the next 15 years. Until the CCP is completed, Refuge management will continue to be guided by official Refuge purposes; Federal legislation regarding management of national wildlife refuges; and other legal, regulatory, and policy guidance.

Comments and concerns received will be used to develop goals, key issues and management strategies, and draft alternatives. Additional opportunities for public participation will occur throughout the CCP process, which is expected to be completed in early 2001. Interested federal, state, and local agencies, Tribes, organizations, and individuals will be contacted for input.

At this time, preliminary issues identified for the CCP include: how to handle wildlife disturbances caused by low-flying aircraft and by people trespassing during low tides or in water craft; the amount of research opportunities that the Refuges can support without adversely impacting biological resources; determining if invasive species are a problem, and if so, what would be the appropriate management response; determining what opportunities exist to cooperate with agencies responsible for pollution threats; and identifying off-site educational/interpretative opportunities in cooperation with the National Park Service, National Marine Sanctuary, state and local government, and Tribes. Because of their inaccessibility and the sensitivity of wildlife to disturbance, public uses of the Refuges' Islands are not a part of the long-term planning. A range of alternatives (and their effects on the biological resources and on the local communities) that address the issues and management strategies associated with these issues will be evaluated in the environmental assessment.

With the publication of this notice, the public is encouraged to send written comments on these and other issues, courses of action that the Service should consider, and potential impacts that could result from CCP implementation on Washington Coast National Wildlife Refuges.

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, Council on Environmental Quality's NEPA Regulations 40 CFR 1506.6(f), and other Service and Department policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the author's name, address, or other identifying information. Such comments

may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

Dated: March 22, 2000.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–7608 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) published a Notice in the **Federal Register**, 64 FR 35674, July 1, 1999, inviting public comment on an options document entitled, ''Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska.'' The document described four models for organizing management bodies as required by the amended migratory bird treaty with Canada. The comment period closed October 29 and, after reviewing the comments, the Alaska Regional Director decided to implement a system combining elements of models 1 and 3 as described in the options document.

DATES: The decision described in this notice will become effective April 27, 2000.

ADDRESSES: Correspondence may be addressed to the Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503; Attn: Migratory Bird Management.

FOR FURTHER INFORMATION CONTACT: Mimi Hogan, 907/786–3673, or Bob Stevens, 907/786–3499, at the above address.

SUPPLEMENTARY INFORMATION:

Background

In 1916 the U.S. Senate ratified the Convention Between the United States and Great Britain (on behalf of Canada) For The Protection Of Migratory Birds. A similar treaty was ratified with Mexico in 1936. The treaties specified a close season on the taking of migratory game birds between March 10 and September 1 of each year. The treaties did not take into account traditional harvests of migratory birds by northern indigenous people during the spring and summer months. This harvest, which had occurred for centuries, was a necessary part of the subsistence lifestyle of the northern people, and continued after the ratification of the treaties. After many years of attempts to change the treaties, the Senate approved Protocol amendments to both treaties in 1997, allowing for the subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence zones in Alaska.

(a) What is the intent of the Protocol amendments? The goals of the Protocol are to allow a traditional subsistence harvest and to improve conservation of migratory birds by allowing for the effective regulation of this harvest. The action is not intended to cause significant increases in the take of migratory birds relative to their continental population sizes.

(b) Who is eligible to harvest in the spring and summer? The U.S. Senate confirmed its understanding at ratification that an eligible indigenous inhabitant is a permanent resident of a village within a subsistence harvest area, regardless of race.

(c) Where are the subsistence harvest areas? According to Protocol documents, most villages north and west of the Alaska range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands would qualify as subsistence harvest areas. Anchorage, Matanuska-Susitna and Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area and Southeast Alaska would generally not qualify for a spring or summer harvest.

(d) Are there exceptions to the eligible areas? Protocol language allows for limited exceptions so that some individual communities within excluded areas may qualify for designation as subsistence harvest areas for some limited purposes. For example, regulations could allow collecting of gull eggs by some villages in Southeast Alaska.

(e) What other changes does the Protocol mandate? The Protocol amendments call for participation of indigenous inhabitants on management bodies that will be created to ensure an effective and meaningful role for indigenous inhabitants in the conservation of migratory birds.

(f) Who will be on these management bodies and what will they do? The Secretary of State's submittal document accompanying the Protocol confirms that the management bodies will include Native, federal, and State of Alaska representatives as equals, and that they will develop recommendations for, among other things: seasons and bag limits; law enforcement policies; population and harvest monitoring; education programs; research and use of traditional knowledge; and habitat protection.

(g) Where do the recommendations go? Relevant recommendations will be submitted to the U.S. Fish and Wildlife Service and to the Flyway Councils.

Summary of Public Involvement

(a) What public process did you follow before writing the options document entitled, ''Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska''? To aid in the preparation of the options document entitled, ''Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska'', the Service, the Alaska Department of Fish and Game, and the Native Migratory Bird Working Group held public forums to discuss the amended treaty and to listen to the needs of the subsistence user. The Native Migratory Bird Working Group is a consortium of Alaska Natives, formed by the Rural Alaska Community Action Program to represent the Alaska Native subsistence hunters of migratory birds. Forum locations included Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. The Service led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay, and for the Central Council of Tlingit & Haida in Juneau. Refuge staffs at the Yukon Delta, Togiak, and Kodiak National Wildlife Refuges conducted public meetings in the villages within their refuge areas and discussed the amended treaty at those meetings. We wrote the four models described in the options document based on what we heard at statewide meetings.

(b) Who received copies of ''Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska''? In May 1999 we released to the public for

review and comment the options document describing four possible models for establishing management bodies. We mailed copies of that options document to approximately 1350 individuals and organizations on the project mail list, including all tribal councils and municipal governments in Alaska. We distributed an additional 600 copies at public meetings held to discuss the four models. Also, we made the document available on the Fish and Wildlife Service web page.

(c) How long was the public comment period? The comment period was open from the time the document was released the end of May until September 30, 1999. We then extended the opportunity to comment through October 29, 1999.

Analysis of Public Comments

(a) What was the response? We received 60 written comments addressing the formation of management bodies. Of those 60 comments 26 were from tribal governments, 20 from individuals, 10 from organizations, 2 from federal government, 1 from the State of Alaska, and 1 from the Native Migratory Bird Working Group. Comments reflected a wide range of views and did not show a definitive selection of any one model.

(b) What comments did you receive supporting or opposing Model 1? Model 1 proposed one statewide management body with 12 regional bodies providing representation to the statewide body. The statewide management body would consist of three federal, three state, and 12 Native members. Representative comments supporting Model 1: The management body is manageable in size and appears simple, well-balanced, and cost effective. The non-profit organizations identified as partners are well established and accustomed to working with one another. One management body promotes interregional cooperation for management of shared bird populations. It also can better develop interregional management programs and be more creative in resolving conservation issues. Also, one management body provides incentive to reconcile differences instate rather than presenting dissenting views to the Flyway Councils and to the Service Regulations Committee.

Representative comments opposing Model 1: This project adds too much workload on the non-profit agencies leading to limited representation for the more remote villages. The representatives on the management body would need to know all the relative issues statewide resulting in reduced ability to focus on the regional issues. Decisions would not be made at the regional level. People outside the region would be too influential leading to the possibility that the statewide group would override regional needs. The statewide body is too removed from the village. Along that same line, the non-profit agencies should be acting on behalf of its regional people and not have statewide responsibility.

(c) What comments did you receive supporting or opposing Model 2? Model 2 proposed one statewide management body with 10 regional bodies. The Federal Subsistence Regional Advisory Councils would serve as the regional bodies. The statewide management body would consist of two federal, two state, and 10 Native members. Representative comments supporting Model 2: The ten Regional Advisory Councils are already organized and familiar to subsistence users. They obtain local input better than most other groups. Using the Regional Advisory Councils would be efficient, cost effective, the least disruptive, and quickly implemented. One management body would improve communication among all areas of the state and would provide a diversity of views on the management body. It would give each geographic area an opportunity to get a clearer view of the big picture of migratory bird management. One management body would represent Alaska with one unified voice.

Representative comments opposing Model 2: All of the ten Regional Advisory Council representatives would need to know all the issues statewide and not just those of their respective regions. The Regional Advisory Councils are already overworked, especially with the addition of fisheries management issues. Using groups formed pursuant to the Alaska National Interest Lands Conservation Act (ANILCA) to manage a resource for which subsistence harvest is governed by international treaty and regulations promulgated thereunder could be confusing to the management body members as well as to the subsistence hunters.

(d) What comments did you receive supporting or opposing Model 3? Model 3 proposed creating seven management bodies using common resource use patterns to form the boundaries. Membership on the seven management bodies would total 12 federal, 12 state, and 48 Native members. Representative comments supporting Model 3: This model would allow for geographic differences in culture, traditions, hunting styles, and management needs. Input would be more readily received from local subsistence users and decisions would be made regionally. Travel to regional meetings would be affordable.

Representative comments opposing Model 3: With this model no unified voice would be speaking for the subsistence hunter in Alaska. Conflicting recommendations would go forward to the Flyway Councils and the Service Regulations Committee, causing decisions to be made outside Alaska. So many management bodies would tax communication among the regions in the state. This model would be too expensive to administer.

(e) What comments did you receive supporting or opposing Model 4? Model 4 proposed creating three management bodies using shared bird populations to form the boundaries. Membership on the three bodies would total three federal, three state, and 13 Native members. Representative comments supporting Model 4: This model provides strong relationships with the Flyway Councils. It is aligned well for management of shared species and similar harvest patterns.

Representative comments opposing Model 4: The culture of the people in the Interior region and the bird populations are too different to be combined with those of the Northwest and Arctic Slope. Village leaders are very busy with a wide range of responsibilities to uphold. There are not enough leaders in the rural communities to accommodate the needs created by this model. The workload generated by this model is too much for the non-profit organizations, impacting their ability to adequately involve their people.

(f) Did the Federal Subsistence Regional Advisory Councils provide comments? Yes. In addition to the 60 written comments, 9 of the 10 Federal Subsistence Regional Advisory Councils passed resolutions regarding the four models presented. Five of the councils approved the model using the Regional Advisory Councils to provide a representative to one statewide management body. Reasons for supporting that model included a concern for adequate communication if too many different groups became involved in management of subsistence resources. They also felt that they were the most knowledgeable about subsistence issues and that they would be able to begin management more quickly since they already had an organization in place. Four of the Regional Advisory Councils opposed the model involving them. Reasons given for their opposition included a lack of time or the feeling that the

regional non-profit organizations had already been involved in the treaty amendments and were more knowledgeable of the issues specific to migratory bird subsistence hunting. One Regional Advisory Council decided not to comment.

(g) How did you address suggestions that did not fit any specific model? We received a few comments that were in the form of recommendations and neither supported nor opposed any of the four models. One comment suggested that the number of agency representatives on the management body remain flexible. We agree. In the May document we stated that both the federal and state governments would place one representative on the management body for each five Native representatives. Our final decision is to place one federal and one state representative on the management body. Regardless of the number of representatives serving on the management body, the Native, federal, and state components included on the management body will serve as equals.

A second comment suggested that the proposals formulated by the management body be submitted to the Board of Game. The Letter of Submittal accompanying the Protocol to the White House stated that recommendations from the management body would be submitted to the U.S. Fish and Wildlife Service and to the Flyway Councils. The Regional Director's decision discussed below incorporates this mandate into the process to be followed.

A third comment suggested that the state representative on the management body be a member of the Alaska Board of Game. It is not the purpose of this Notice to specify who will serve on the management body or how those selections should be made. In the case of the State of Alaska, representatives will be selected by the Commissioner of the Department of Fish and Game.

A fourth comment suggested that the Fish and Wildlife Service have an ad hoc member from the lower 48 states on the management body. A primary purpose of the management body is to afford the indigenous inhabitants of the State of Alaska an effective and meaningful role in the conservation of migratory birds including the development and implementation of regulations affecting the non-wasteful taking of migratory birds and the collection of their eggs. The management body will formulate recommendations after reviewing technical information of local and national significance. This information will be provided by federal and state technical support staff. Flyway Councils and Fish and Wildlife Service staff in the lower 48 states will review the recommendations before regulations are promulgated. This process assures protection of the national interest while initiating regulations at the local level.

A fifth comment to be addressed suggested that the state fish and game advisory councils and the Alaska Board of Game be involved in the regulatory process, possibly through an intergovernmental agreement. Management body meetings, as well as regional meetings, will be conducted as a part of a public process. The meetings will be open to public comment, and organizations as well as individuals will be encouraged to participate. By participating in this manner the fish and game advisory councils and the Alaska Board of Game can become involved in the initial stages of the regulatory process. As with all waterfowl regulations, the State Board of Game will establish state regulations.

The Alaska Department of Fish and Game supported Model 1, believing that one management body would be more effective and could be more creative in developing regulations and working on conservation issues. One management body would also provide incentive to resolve regional differences within Alaska and before recommendations are forwarded to the Flyway Councils and the Service Regulations Committee. The State also endorsed consensus as the primary means of decision making and full involvement of the public in the process. The State strongly supported the establishment of state migratory bird hunting regulations within frameworks provided in federal regulations.

The Native Migratory Bird Working Group (NMBWG) proposed a fifth model. They proposed seven regional management bodies, using boundaries as proposed in Model 3. Each of the seven bodies would have Native, federal, and state representation. A statewide management body would coordinate overlapping regional issues and provide for sharing information between regions. The NMBWG could serve initially to represent subsistence hunters on the statewide body until the partner organizations appoint or select their representatives.

The NMBWG made several additional comments. They proposed that the management bodies address all issues related to migratory birds for all seasons and not be limited to spring/summer hunting. Article II(4)(b)(ii) of the Protocol provides for an exception to the close season on migratory game birds between March 10 and September 1 found in Article II(1). The intent of amending the Migratory Bird Treaty with Canada has always been to provide for a spring/summer subsistence harvest during the close season. The management of the hunt for this period (March 10–September 1) will be done through management bodies established in the amendment. Recommendations from the management bodies will address regulations for spring and summer harvest only.

The NMBWG proposed an official seat for a Native representative on the Flyway Council and the Technical Committee of each of the four Flyway Councils. The Service cannot provide an official seat for a representative on any of the Flyway Councils or Technical Committees. The Flyway Councils and Flyway Technical Committees are comprised of administrative and technical representatives, respectively, from each state wildlife agency. Flyway Councils are governed by by-laws, and members are comprised mostly of state agency directors or their designated representatives. While there is Service participation in Flyway meetings, final recommendations are formulated by the state personnel involved. It is our understanding that representatives of the Alaska Management Body probably would be welcome on the Flyway Technical Committees, but that decision is up to the respective Flyway Councils, not the Service.

The NMBWG requested that a Native representative be provided a meaningful role on the Service Regulations Committee. Only Service officials serve on the Regulations Committee. We propose that two representatives from the Statewide Management Body attend the Service Regulations Committee to provide technical information and to answer questions regarding spring and summer harvest regulations for Alaska.

The NMBWG suggested that the Service Regulations Committee provide its concerns in writing if a recommendation is rejected. Whenever a proposal is sent to the Service Regulations Committee, the Service responds in writing stating its position.

The NMBWG suggested a voting system that would tend to avoid 2 to 1 votes on the management bodies when consensus could not be reached. Details regarding the role of voting on the management bodies will be determined when the management bodies have an opportunity to develop an operations manual outlining their policies and procedures.

The NMBWG requested that neither the State Board of Game nor the Federal Subsistence Board have any jurisdiction over the subsistence migratory bird harvest—spring, summer, or fall. The Federal Subsistence Board will not be a

part of the management body organization. However, the states are actively involved in migratory game bird management and have considerable involvement in regulatory matters. This relationship is longstanding and assures that state interests are considered fully, if not always satisfied, in the exercise of federal authority to promulgate regulations governing migratory bird hunting. The Service affirms the State's right, as defined in Section 708 of the Migratory Bird Treaty Act, to make or enforce laws or regulations as long as they are not inconsistent with federal laws or regulations.

Decision on Format of Management Bodies

(a) Which of the 4 models in the options document did you choose? In our options document, ''Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska'' , we said that additional models or a combination of models would be considered, depending on the comments received during the review period. What we heard during the comment period were strong statements for (1) the need for a unified statewide body in order to coordinate overlapping issues and to communicate with subsistence hunters from all over the state; and (2) the need to keep discussion and decision-making regarding regional issues at the regional level where the user could be more involved. In order to address those two needs, we have decided to combine elements of model 1, (one statewide management body with 12 regions providing one representative each) with elements of model 3, (seven management bodies representing seven geographic areas.) Details on how we propose to combine and modify the two models follows.

(b) What is the format for management bodies? A single Statewide Management Body will be formed consisting of representatives from each of seven regional bodies and one representative each from the Fish and Wildlife Service and the Alaska Department of Fish and Game. Membership on the seven regional bodies will be comprised of subsistence users from each of the seven regions. The Service will contract with 12 partner organizations (see(e)), to organize and administer the regional bodies. The Native Migratory Bird Working Group will serve initially to represent migratory bird subsistence users on the statewide body until the regional bodies appoint or select their representatives.

(c) What is the function of the Statewide Management Body? The Statewide Management Body will provide meaningful input in the development of recommendations on regulations for spring and summer harvest and conservation of migratory birds in Alaska. In doing so, it will provide guidelines within which the regional bodies can create recommendations. An example of a guideline would be no hunting of spectacled or Steller's eiders because their populations are listed as threatened. Another statewide guideline might prohibit harvest during the nesting season but the regions would have flexibility to determine dates that recognize differences in timing and distribution of migratory birds. We believe the guidelines will be relatively stable and might need little modification from year to year. The regional bodies will recommend regulations based on regional needs but the recommendations must be within the broad guidelines established by the Statewide Management Body. The Statewide Management Body will coordinate the recommendations from the seven regional bodies and forward them to the Service and Flyway Councils.

(d) How will the Statewide Management Body operate? The Statewide Management Body will include Native, federal, and state representatives as equals. The Statewide Management Body will strive for consensus on all decisions. The Statewide Management Body will develop an operating manual providing options for voting on issues that are not reached by consensus. All meetings will be open and accessible to the public. Any member of the public will be able to file proposals and statements with the Statewide Management Body; and any member of the public may speak at the meeting, consistent with the operating procedures.

(e) Who are the regional bodies? Consistent with the recommendation of the Native Migratory Bird Working Group, the seven regional bodies will be organized along the lines of Model 3. The seven regional bodies will be made up of subsistence users and will be organized by the following 12 partner organizations that will be responsible for administering the regional programs:

1. Chugachmiut, Cook Inlet Tribal Council, Copper River Native Association, and Central Council, Tlingit & Haida Indian Tribes
2. Aleutian/Pribilof Islands Association, Kodiak Area Native Association
3. Bristol Bay Native Association
4. Association of Village Council Presidents
5. Kawerak
6. Maniilaq Association & the North Slope Borough
7. Tanana Chiefs Conference

(f) What are the responsibilities of the 12 partner organizations? Each of the partner organizations listed above will work with the subsistence users within its region to establish membership on each of the regional bodies. They will be responsible for coordinating meetings within their regions, soliciting proposals and keeping the villages informed.

(g) What are the functions of the regional bodies? The regional bodies have all the functions as the Statewide Management Body as described in the Protocol Letter of Submittal. These are: develop recommendations, for among other things, seasons and bag limits; law enforcement policies; population and harvest monitoring; education programs; research and use of traditional knowledge; and habitat protection.

Each regional body will provide at least one representative to the Statewide Management Body consistent with paragraph (b). However the three regional bodies with more than one administrative partner organization (see (e)) may provide a representative from each of the partner organizations. For example, the regional body administered by Maniilaq Association & the North Slope Borough could choose to send just one representative to the Statewide Management Body to represent the regional body or they could choose one representative from Maniilaq region and one from the North Slope Borough. Total regional representation on the Statewide Management Body could range from seven to 12 members.

(h) How will the regional bodies operate? Each region can decide on the size of its organization, who serves on it, the length of terms, methods of involving subsistence users, and related matters. The state and federal partners will provide technical assistance to the regional bodies but will not serve as members of the regional body or be involved in the decision making of the regional body. As long as the regional bodies operate within the guidelines provided by the Statewide Management Body, the final decision for recommendations that affect only one region would be made solely by that regional body. Regional body recommendations for regulations will be forwarded to the Statewide Management Body. The Statewide Management Body may choose to reject the recommendation from a regional body

only when it does not conform with the statewide guidelines.

Although they are referred to as regional bodies for the purpose of this Notice the regional bodies may adopt any name that reflects their mission in their region. For example, the Waterfowl Conservation Committee of the Association of Village Council Presidents is already in existence on the Yukon-Kuskokwim Delta and has been instrumental in the negotiations of the Protocol amendments.

(i) How will the this program be funded? The Service will negotiate annual funding agreements with the administrative partner organizations (see (e) above) to help cover the cost of meetings, travel, village council coordination and training. An important part of this program is monitoring the spring and summer subsistence harvest in order to properly manage migratory birds. Annual funding agreements with Alaska Native Organizations, the Alaska Department of Fish and Game, and others will be used to accomplish harvest monitoring.

(j) How will the Statewide Management Body interact with the Flyways? The State of Alaska is most associated with Pacific coast states and is a member of the Pacific Flyway Council. As necessary, Alaska coordinates with the Atlantic Flyway on tundra swans, the Mississippi Flyway on ducks, and the Central Flyway on mid-continent white-fronted geese, sandhill cranes and ducks. Two representatives from the Statewide Management Body will attend Pacific and Central Flyway Council meetings and can request membership to their Technical Committees that provide the individual Flyway Councils with advice on biological matters. In addition, the responsibilities of the two representatives will include attending the Service Regulations Committee meetings. Representatives will be expected to provide technical information and to answer questions regarding spring and summer harvest regulations for Alaska.

(k) What is the relationship to the federal and state systems for managing migratory birds? The regulations adopted to manage spring and summer subsistence hunting of migratory birds in Alaska will become part of the annual regulatory process currently used by the Service and the State. The Service Regulations Committee will consider the proposed regulations at the same time as those for fall and winter seasons.

The process of developing these regulations begins in January with a meeting of the Service Regulations Committee. Preliminary regulatory proposals are developed for the coming year and published in the **Federal Register** as a notice of proposed rulemaking. The Flyway Councils and their Technical Committees, as well as individual states and the public, then have an opportunity to respond to these proposals. Federal migratory bird hunting regulations are divided into ''early season'' and ''late season'' regulations. Early season regulations presently cover all of Alaska's migratory bird seasons, opening as early as September 1. The state adopts migratory bird hunting regulations within the federal frameworks.

Late season regulations cover the normal waterfowl, crane and snipe seasons in the lower-48 states and generally begin on or after October 1. In the next phase, the Service Regulations Committee meets; public hearings are held; proposed frameworks are developed and published in the **Federal Register**; and an abbreviated open comment period is established. Following this comment period, final frameworks are established and published in the **Federal Register**. The **Federal Register** final rule represents the final product of the regulations development process. Alaska's spring and summer regulations could be a part of ''late season'' regulations schedule in order to coordinate with the Flyway Councils and Service Regulations Committee. This means regulations would be published in the fall for the following spring and summer. If this proves too unresponsive, the schedule will be revised.

(l) When would the Statewide Management Body and the regional bodies meet? A schedule which interacts with the present regulatory system might look like this:

November: Statewide Management Body meets, reviews population and harvest information, and prepares guidelines. Issues a request to the regions for regional recommendations that are within guidelines.

January: Regional bodies meet, review population and harvest information and prepare recommendations for regional regulations and management programs.

February: Statewide Management Body meets and reviews recommendations from regional bodies. Sends recommendations to Pacific Flyway, Central Flyway and the Service.

March: Representatives from the Statewide Management Body attend Flyway Technical Committee and Council meetings.

July: Representatives from Statewide Management Body represent Alaska and provide technical information to the Flyway Councils and Service Regulations Committee.

September: Final rules are published for the following spring and summer. Cycle starts again.

(m) How will the general public be involved in the process of setting spring and summer regulations for migratory birds in Alaska? The Statewide Management Body and the supporting regional bodies will be open to recommendations from all user groups. The meetings will be open to the public and there will be opportunities for public comment on proposals. In the present continental migratory bird regulatory system there are periods open for public comment. All the comments and recommendations are taken into consideration before hunting regulations are proposed and finalized.

Dated: March 21, 2000.

David B. Allen,

Regional Director, Anchorage, Alaska.

[FR Doc. 00–7550 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1230–PA; 8322]

California: Temporary Closure of Squaw Lake Campground to all Access, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure of Squaw Lake Campground to all public access: May 1, 2000, through July 31, 2000. Days and times of closures will be from each Sunday at 7 p.m. through each Friday at 10 a.m. Mountain Standard Time. The campground will remain open on Memorial Day, May 29, 2000, until 7 p.m. MST.

SUMMARY: Notice is hereby given that all public access is prohibited into the Squaw Lake Campground area each Sunday at 7 p.m. through each Friday at 10 a.m. MST. The closure area is located within:

San Bernardino Meridian, California

T.15 S., R.24 E.,
Sec. 5, portion of the E½, portion of the E½NW¼,

Aggregating 5 acres, more or less.

SUPPLEMENTARY INFORMATION: The temporary closure of Squaw Lake Campground to all public access is being implemented for the health and safety of the public. The U.S. Bureau of Reclamation will be conducting safety testing of the dam structures to

determine foundation and seismic stability of the structures. During the testing, the water level elevation of Senator Wash Reservoir will be raised and lowered significantly. The dam will be monitored on a 24 hour basis utilizing various methods and equipment such as flood lights, generators, piezometers and an early alert warning siren for safety. The campground will be open to the public on Friday mornings at 10 a.m. All persons, boats, vehicles, and personal equipment must be vacated from the campground by 7 p.m. each Sunday. The only exception is Memorial Day which falls on a Monday May 29, 2000, when the campground will remain open for the extended weekend until 7 p.m. on Monday the 29th. The campground will remain closed to all public access during testing which will take place from Sunday at 7 p.m. until Friday at 10 a.m. This closure shall apply to all members of the public unless permitted by an authorized Bureau of Land Management Officer. Authority for this action is contained in 43 CFR 8364.1. Violation of this regulation is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Vehicles found in violation of this closure notice are subject to being towed at the owners expense.

EFFECTIVE DATES: May 1, 2000, through July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365; (520) 317–3210.

Dated: March 17, 2000.

Gail Acheson,

Field Manager.

[FR Doc. 00–7518 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–1220–00]

Notice of Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Closure of Certain Public Lands in Box Elder County, Utah to Off Road Vehicle Use.

SUMMARY: Notice is hereby given that effective immediately, selected public lands administered by the Bureau of Land Management (BLM), Salt Lake Field Office, within western Box Elder County are closed to off road vehicle (ORV) (also commonly referred to as off highway vehicle—OHV) use on an interim emergency basis. This action will allow BLM to address concerns related to unrestricted cross country travel in the specific places where we now have resource damage. The purpose of this closure is to protect wildlife, wildlife habitat, rangeland resources, soil, vegetation, cultural resources, historical resources, and other resources from ongoing and imminent adverse impacts from ORV use. Exemptions to this closure will apply for administrative and management purposes for the Bureau of Land Management, BLM authorized permittees, and law enforcement personnel. Other exemptions to this closure order may be made on a case by case basis by the authorized officer. This emergency closure will remain in effect until BLM completes a land use plan amendment for OHV management.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Environmental Coordinator, Bureau of Land Management, Salt Lake Field Office, 2370 S. 2300 W., Salt Lake City, UT 84119, telephone (801) 977–4300.

SUPPLEMENTARY INFORMATION: As an interim measure, BLM is joining Box Elder County, the U.S. Forest Service and the State of Utah Sovereign Lands in imposing restrictions for OHV use on public lands in western Box Elder County. The BLM is temporarily closing selected public lands to off highway vehicle use consistent with the County's access road management plan and related map. The new restrictions for public lands, which are identified on the map, include full closure of very limited lands, seasonal closures of specific lands and closures to cross country travel for certain lands. This plan was adopted on July 7, 1998, by the Box Elder County Commission as Ordinance No. 222 which applies to western Box Elder County. This ordinance is the product of recommendations made by the West Box Elder Access Management Team with extensive public involvement and support from BLM, State Sovereign Lands, and the U.S. Forest Service (USFS). With this interim emergency action, BLM joins the County, USFS and State Sovereign Lands in providing consistent OHV management in western Box Elder County regardless of land ownership. Without this action, and because all other lands in western Box Elder County have OHV restrictions, BLM public lands, which are currently open to OHV use without restriction, would be subject to increasing impacts from OHV use. These closures are a temporary action to protect public lands and resources until BLM completes the proposed plan amendment for off-highway vehicle designations for public lands in Box Elder County, Notice of Intent published April 15, 1997. Imposing the OHV use restrictions will protect wildlife, wildlife habitat, soil, vegetation, cultural resources, historical resources, and other resources from damage by off-highway vehicles (OHVs). This closure shall not be construed as a limitation on BLM's future planning and off-highway vehicle route designations.

The referenced map and ordinance is available for review at the above address and at the Box Elder County Mapping Department.

The authority for this closure is 43 CFR 8341.2 and 43 CFR 8364.1. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Sally Wisely,

State Director.

[FR Doc. 00–7551 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting, National Landmarks Advisory Commission

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the National Park System Advisory Board will be held at 9:00 a.m. on the following date and at the following location.

DATES: April 10, 2000.

LOCATION: Main Hearing Room (Room 100); First Floor; 800 North Capitol Street, NW; Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Register, History, and Education (2280); National Park Service, 1849 C Street, NW; Room NC–400; Washington, DC 20013–7127. Telephone (202) 343–81635.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the full National Park System Advisory Board, meeting on April 16, 2000, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the National Park System Advisory Board those properties that the Landmarks Committee finds meet the

criteria for designation as National Historic Landmarks. The members of the National Landmarks Committee are:

Mr. Parker Westbrook, Co-Chair
Dr. Allyson Brooks
Dr. Ian W. Brown
Mr. S. Allen Chambers, Jr.
Dr. Elizabeth Clark-Lewis
Mr. Jerry L. Rogers
Dr. Richard Guy Wilson

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR Part 65.

Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Register, History, and Education (2280); National Park Service; 1849 C Street, NW; Room NC–400; Washington, DC 20240–7127.

The committee will consider the following nominations:

CONNECTICUT

Portland Brownstone Quarries

IOWA

Old State Quarry

MAINE

Parker Cleaveland House

MASSACHUSETTS

Gropius House

OREGON

Columbia River Highway

PENNSYLVANIA

I.N. Hagan House

VERMONT

Rockingham Meetinghouse

The committee will consider the following boundary expansion:

MONTANA

Great Northern Railway Buildings

The following properties will be on the agenda if waivers to the 60-day notification period are received from the owners and the highest elected local official.

INDIANA

First Baptist Church
First Christian Church
Irwin Union Bank and Trust
Mabel McDowell Elementary School
Miller House
North Christian Church

KENTUCKY

Labrot & Graham (Old Oscar Pepper) Distillery

NEW YORK

Sagamore Lodge
Santanoni Preserve

RHODE ISLAND

John N.A. Griswold House

VERMONT

Socialist Labor Party Hall

Dated: March 20, 2000.

Beth Boland,

Acting Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Park Service, Washington, DC.

[FR Doc. 00–7572 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 18, 2000.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by April 12, 2000.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Alameda County

Oakland Waterfront Warehouse District, Roughly bounded by I–880, Madison St., 2nd St., and Webster St., Oakland, 00000361

Amador County

Jackson Downtown Historic District, Roughly along Main St. from 215 Main St. to 14 Broadway, Jackson, 00000365

Contra Costa County

Richmond Shipyard Number Three, Point Potrero, Richmond, 00000364

Santa Barbara County

Herschell, Allan, 3–Abreast Carousel, 223 E. Cabrillo Blvd., Santa Barbara, 00000363

Santa Clara County

Spillman Engineering 3–Abreast Carousel, 139 B Eastridge Mall, San Jose, 00000366

Tehama County

Kraft, Herbert, Memorial Free Library, 909 Jefferson, Red Bluff, 00000362

COLORADO

Delta County

Surface Creek Livestock Company Silos, 315 SW 3rd St., Cedaredge, 00000367

Weld County

Parish, Harvey J., House, 701 Charlotte St., Johnstown, 00000368

CONNECTICUT

Hartford County

West End Library, 15 School St., Farmington, 00000369

GEORGIA

Newton County

Covington Mills and Mill Village Historic District, Roughly bounded by Wheat, Collins and Lott Sts. and, to the north, the Covington Mills pond and Creek, Covington, 00000370

Thomas County

MacIntyre Park and MacIntyre Park High School, 117 Glenwood Dr., Thomasville, 00000371

MAINE

Hancock County

Shore Acres, 791 Lamoine Beach Rd., Lamoine Beach, 00000373

Kennebec County

Oakland Public Library, (Maine Public Libraries MPS) 18 Church St., Oakland, 00000375

Lincoln County

Bremen Town Hall, (Former), Rte 32., 0.2 mi. N of Medomak Rd., Medomak, 00000372

Somerset County

Carrabasset Inn, Jct. of Union St. and ME 8, North Anson, 00000376

Waldo County

College Club Inn, 190 W. Main St., Searsport, 00000377
Springdale Farm, Horseback Rd., 0.5 mi. S of Troy Rd., Burnham, 00000374

MISSISSIPPI

Forrest County

Burkett's Creek Archeological Site, Address Restricted, Hattiesburg, 00000380

Lamar County

Municipal Courtroon and Jail, Old, 405 Pine St. at Railroad Ave., Sumrall, 00000379

Walthall County

New Orleans and Great Northern Railroad Depot— Tylertown, Franklin Hwy., Tylerton, 00000378

NEW YORK

Livingston County

Hartman, William, Farmstead, 9296 NY 63 N, Dansville, 00000381

PENNSYLVANIA

Bucks County

Quakertown Passenger and Freight Station, Front and East Broad Sts., Quakertown, 00000382

RHODE ISLAND

Providence County

Hope Street School, 40 Hope St., Woonsocket, 00000383

VERMONT

Bennington County

Orchards, The, 982 Mansion Dr., Bennington, 00000384

[FR Doc. 00–7573 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Appalachian Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Appalachian National Scenic Trail. The original graphic image was developed and published by the Department of the Interior in 1970. The National Park Service has officially used this insignia—and earlier variations—since completion of planning documents of the Trail in 1982. It has been slightly redesigned since then so that lettering and framing match other National Trail System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Appalachian National Scenic Trail, administered by the National Park Service, Appalachian Trail Park Office, Harper's Ferry, WV. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7558 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the California National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the California National Historic Trail. The original graphic image was developed as part of the Trail's comprehensive management and use plan. It first came into public use in 1997. The National Park Service official uses this insignia to mark the trail's route. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the California National Historic Trail, administered by the National Park Service, Long Distance Trails Office, Salt Lake City, UT. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for the National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7559 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Ice Age National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Ice Age National Scenic Trail. The original graphic image was developed as part of the Trail's comprehensive and use plan by the Department of the Interior and was published on May 13, 1983 in the **Federal Register.** The National Park Service has officially used this insignia—and subsequent variations—since the plan was completed in 1983. It was redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier design which is still in use along the Trail is also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Ice Age National Scenic Trail, administered by the National Park Service, Ice Age and North Country National Scenic Trails, Madison, WI. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7560 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Juan Bautista de Anza National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Juan Bautista de Anza National Historic Trail. The insignia for this trail was developed as part of the Trail's comprehensive management and use plan published in 1996. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Juan Bautista de Anza National Historic Trail, administered by the National Park Service, Pacific Great Basin Regional Ofice, San Francisco, CA. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7561 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Mormon Pioneer National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of Mormon Pioneer National Historic Trail. The original graphic was developed as part of the Trail's comprehensive plan and finding of no significant impact in 1981. It was published by the Department of the Interior on March 14, 1983 in the **Federal Register**. The National Park Service has officially used this insignia—and subsequent variations—

since then. It has been slightly redesigned in recent years so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Mormon Pioneer National Scenic Trail, administered by the National Park Service, Long Distance Trails Office, Salt Lake City, UT. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms–3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7562 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Natchez Trace National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Natchez Trace National Scenic Trail. The National Park Service has officially used this insignia—and subsequent variations—since the trail was established. It was redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier design which is still in use along the Trail is also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Natchez Trace National Scenic Trail, administered by the National Park Service, Natchez Trace Parkway, Tupelo, MS. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7563 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Market for the North Country National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the North County National Scenic Trail. The original graphic image was developed as part of the Trail's comprehensive plan for management and use in 1982 and published in the **Federal Register,** May 13, 1983. The National Park Service has officially used this insignia—and subsequent variations—since. It was slightly redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplished the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail logo for the North County National Scenic Trail, administration by the National Park Service, Ice Age and North Country National Scenic Trails, Madison, WI. Authorization for use of this trail market is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7564 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Oregon National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of Oregon National Historic Trail. The original graphic was developed after completion of the Trail's comprehensive management and use plan in 1981. The insignia was published in the **Federal Register,** September 11, 1985. The National Park Service has officially used this insignia—and subsequent variations—ever since. It was slightly redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Oregon National Scenic Trail, administered by the National Park Service, Long Distance Trails Office, Salt Lake City, UT. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7565 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Market for the Overmountain Victory National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, *etc.* in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Overmountain Victory National Historic Trail. The original graphic image was developed for the Trail's comprehensive management plan in 1982 and published in the **Federal Register** May 13, 1983. The National Park Service has officially used this insignia—and subsequent variations—ever since. It was slightly redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Overmountain Victory National Historic Trail, administered by the National Park Service, Southeast Region, Atlanta, GA. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation

thereof, or photographs or prints on in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7566 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Official Trail Marker for the Pony Express National Historic Trail

AGENCY: National Park Service, Interior.

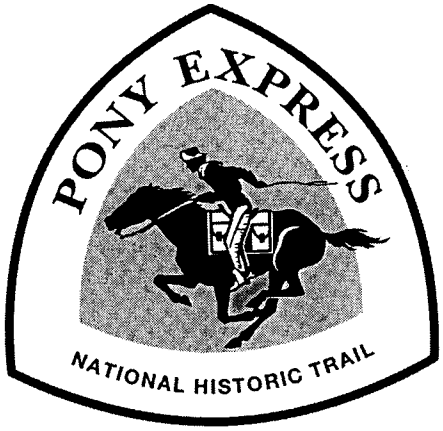
ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. In 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Pony Express National Historic Trail. The graphic image was developed in conjunction with the comprehensive management and use plan. It came into use in 1997 to mark the Trail's route. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Pony Express National Historic Trail, administered by the National Park Service's Long Distance Trails Office, Salt Lake City, UT. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7567 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Santa Fe National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trail Systems Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Santa Fe National Historic Trail. The original graphic image was developed as part of the Trail's comprehensive management and use plan and published in the **Federal Register** May 6, 1989. The National Park Service has officially used this insignia—and subsequent variations—since completion of planning documents for the Trail in 1990. It has been slightly redesigned since then so that lettering and framing match other National Trail System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Santa Fe National Historic Trail, administered by the National Park Service, Long Distance Trails Group Office, Santa Fe, NM. Authorization for use of this trail marker is controlled by the administrator of the Trial.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Director.

[FR Doc. 00–7568 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Selma to Montgomery National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 124(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Selma to Montgomery National Historic Trail. The insignia for this trail was completed in February 1998. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Selma to Montgomery National Historic Trail, administered by Central Alabama Parks. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails Programming, NPS, ms–3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7569 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Trail of Tears National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Trail of Tears National Historic Trail. The original graphic image was developed as part of the Trail's comprehensive management and use plan in 1992. The National Park Service has officially used this insignia—and subsequent variations—ever since. It has been slightly redesigned since then so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkington, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Trail of Tears National Historic Trail, administered by the National Park Service, Long Distance Trails Group Office, Santa Fe, NM. Authorization for use of this trail marker is controlled by the administrator of the Trail.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steve Elkington, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7570 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for National Recreation Trails

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia for National Recreation Trails. The original graphic image was developed by the Federal Interagency Council on Trails in 1970. The National Park Service has officially used this insignia to help mark all designated national recreation trails. The insignia was slightly redesigned in 1996 so that lettering and framing match other National Trails System markets.

The earlier design, which is still in use, is also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for National Recreation Trails. Authorization for use of this trail marker is controlled by the National Park Service's National Center for Recreation and Conservation, Washington, D.C.

In making this prescription, notice is hereby given that whoever manufactures, sells, or posses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7571 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection; notice of Intent to Operate a Freight Forwarding Facility.

The Department of Justice, Drug Enforcement Administration has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 19, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 27, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item contained in the notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Notice of Intent to Operate a Freight Forwarding Facility.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: None. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The collection of this information is necessary to maintain a closed system of distribution of controlled substances by requiring notification from DEA registrants of their intention to operate a freight forwarding facility through which sealed, packaged controlled substances in unmarked shipping containers are, in the course of delivery to customers, transferred or stored for less than 24 hours. The notice details the registered locations that will utilize the facility, the location of the facility, the hours of operation, the individual(s) responsible for the controlled substances, and the security and record keeping procedures that will be employed. The notice must also detail what state licensing requirements apply to the facility and the registrant's actions to comply with any such requirements. Persons providing such notice and operating within the regulations will not be required to obtain a separate DEA registration for the facility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 50 respondents. 50 responses per year × 2 hours per responses = 100 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If additional information is required contact: Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530.

Dated: March 22, 2000.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 00–7555 Filed 3–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs, National Institute of Justice

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Reinstatement, without change, of a previously approved collection for which approval has expired; Crime Mapping Survey.

The Department of Justice, Office of Justice Programs, National Institute of Justice, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 7, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be director to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 396–3122, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Office of Research and Evaluation, National Institute Justice, 810 7th Street, NW, Washington, DC 20531, or via facsimile (202) 616–0275, Attention: La Vigne.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Crime Mapping Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: None. Office of Research and Evaluation, National Institute of Justice, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies.

Other: None. This national survey is designed to determine the extent to which police departments, specifically crime analysts, are using computerized crime mapping. Surveys will be mailed to a randomly selected sample of police departments. The questionnaire will determine the level of crime mapping within departments, both in terms of hardware and software resources, as well as the types of maps that are produced and how they are used. The information collected from this survey will be used to advise the activities of the Crime Mapping Research Center.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 2,798 respondents for an average of 33 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nomination is 562.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Ave., NW, Washington, D.C. 20530.

Dated: March 22, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–7554 Filed 3–27–00; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–030)]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before April 27, 2000.

ADDRESSES: All comments should be addressed to Mr. Phillip Smith, Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of Review: Extension.

Need and Uses: The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting systems required under 31 U.S.C. 3513.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 850.

Responses Per Respondent: 12.

Estimated Annual Responses: 10,200.

Estimated Hours Per Request: 9 hrs.

Estimated Annual Burden Hours: 91,500.

Frequency of Report: Quarterly/monthly.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–7632 Filed 3–27–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 10:00 a.m., Friday, March 24, 2000.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9)(B) disclosure would significantly frustrate implementation of a proposed Agency action).

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated, Washington, DC., March 23, 2000.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 00–7700 Filed 3–24–00; 10:54 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

Information pertaining to the requirement to be submitted:

1. *The title of the information collection*: NRC ''Nuclear Material Events Database (NMED)'' for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

2. *Current OMB approval number*: 3150–0178

3. *How often the collection is required*: Agreement States are requested to provide copies of licensee event reports electronically or by hard copy to NRC on a monthly basis or within 30 days of receipt from their licensee. This schedule provides the Agreement States 30 days to assess the licensee information prior to providing the information to NRC. Reportable events involve the industrial, commercial, medical use, and/or academic use of radioactive byproduct materials. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within the next working day of notification by an Agreement States licensee.

4. *Who is required or asked to report*: Current Agreement States and any State receiving Agreement State status in the future.

5. *The number of annual respondents*: 31.

6. *The number of hours needed annually to complete the requirement or request*: 945 hours (an average of approximately 1.0 hour per response) for all existing Agreement States reporting; any new Agreement State would add approximately 29 event reports (including follow-up reports) per year or 29 burden hours.

7. *Abstract*: NRC regulations require NRC licensees to report incidents and events involving the use of radioactive byproduct material, and source material, such as those involving a radiation overexposure, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, and abandoned well logging sources. Medical misadministrations are required to be reported in accordance with 10 CFR 35.33. Agreement State licensees are also required to report these events and medical misadministrations to their individual Agreement State regulatory authorities under compatible Agreement State regulations. NRC is requesting that the Agreement States provide information on the initial notification, response actions, and follow-up investigations on events and medical misadministrations involving the use of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facility/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in lessons learned, and may also identify generic issues for further study which could result in proposals for changes or revisions to technical or regulatory designs, processes or standards.

Submit by May 30, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is their a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC World Wide Web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U. S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–000, by telephone at 301–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV*.

Dated at Rockville, Maryland, this 22nd day of March 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7575 Filed 3–27–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Donald C. Cook Unit 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–58 and No. DPR–74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would make administrative and editorial changes to several Technical Specifications (TSs). The proposed changes include: (1) revising boron sampling requirements in mode 6; (2) deleting a reference to obsolete equipment in a footnote; (3) deleting a redundant figure; (4) correcting a reference to another requirement; (5) deleting obsolete notes; (6) adding to surveillance requirements; (7) clarifying instrumentation configuration; and (8) correcting typographical errors.

The proposed action is in accordance with the licensee's application for amendment dated December 3, 1998.

The Need for the Proposed Action

These proposed changes are needed to remove obsolete information, provide consistency between Unit 1 and Unit 2 TSs, provide consistency with the Standard Technical Specifications, provide clarification, and correct typographical errors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the administrative and editorial changes do not impact any requirements. The proposed action does not modify the facility or affect the manner in which the facility is operated.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Donald C. Cook Nuclear Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on March 2, 2000, the staff consulted with the Michigan State official, Mr. David Minnaar of the Michigan Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 3, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room)

Dated at Rockville, Maryland, this 22d day of March 2000.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7574 Filed 3–27–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–30 and 50–185]

National Aeronautics and Space Administration; Plum Brook Reactor and Plum Brook Mock-Up Reactor Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. TR–3 and R–93, issued to the National Aeronautics and Space Administration (NASA), the licensee. The license amendment would allow decommissioning of the Plum Brook Reactor and the Plum Brook Mock-up Reactor at the Plum Brook Reactor Facility (PBRF) near Sandusky, Ohio.

Environmental Assessment

Identification of the Proposed Action

The PBRF consists of a complex of buildings with two non-power reactors. Both reactors have been shut down and defueled. The Plum Brook Reactor (Docket No. 50–30, NRC License No. TR–3) is a 60-megawatt materials test reactor, constructed to perform irradiation testing of fueled and unfueled experiments for space program application. The Plum Brook Mock-up Reactor (Docket No. 50–185, NRC License No. R–93) is a 100-kilowatt swimming-pool type reactor constructed to test ''mock-up'' irradiation components for the Plum Brook Reactor. The PBRF reactors were shut down in 1973. NASA currently has possession only licenses to possess the residual radioactive materials at the facility. All reactor fuel elements have been removed from the facility and the possession only licenses do not allow operation of the reactors.

NASA has proposed to decontaminate the facility to levels that would allow unrestricted release of the 11-hectare (27-acre) PBRF and termination of the licenses. The licensee submitted a decommissioning plan in accordance with 10 CFR 50.82(b) on December 20, 1999. Decommissioning, as described in the plan, will consist of transferring licensed radioactive equipment and

material from the site and decontamination of the facility to meet unrestricted release criteria (this is called the DECON option, as described in NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities''). While the decontamination work is in process, remedial action status surveys will be conducted to ensure that the contaminated material has been removed to levels below the limits required for unrestricted release (25 mrem/yr). Final status surveys will be conducted also. After the Commission verifies that the release criteria have been met, the reactor license will be terminated.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the Plum Brook Reactor Facility'' was published in the **Federal Register** (65 FR 12040) on March 7, 2000.

Further, 10 CFR 51.53(d) requires that each applicant for a license amendment to authorize decommissioning of a production or utilization facility must submit an environmental report that reflects any new information or significant environmental change associated with the proposed decommissioning activities. The licensee's environmental report is contained in Section 8 of the licensee's decommissioning plan.

The Need for the Proposed Action

The proposed action is necessary because the licensee has decided to decommission the facility rather than other alternatives. As specified in 10 CFR 50.82, any licensee may apply to the NRC for authority to decommission the affected facility.

Environmental Impacts of the Proposed Action

The NRC staff has evaluated the radiological impacts of the proposed action as presented in Section 8.5 of the decommissioning plan submitted on December 20, 1999, and concludes that the associated radiological effects of the decommissioning will be acceptable. The staff considered impacts on onsite workers, on transportation workers, and on the public, both during the decommissioning activities and after license termination.

The licensee has established controls to ensure occupational exposure remains below NRC regulatory limits for decommissioning personnel. The collective total dose equivalent to all onsite workers for all of the decommissioning activities is estimated to be about 70 person-rem over the approximate 4-year decommissioning project. This is less than the estimated occupational exposure of 344 person-rem presented in NUREG–0586 and is a result of the approximately 30 years of decay that has already taken place.

Occupational exposure associated with shipment of low level waste has been estimated at less than 18 person-rem. This is similar to the estimate of 22 person-rem for the reference test reactor presented in NUREG–0586 and, again, the lower dose can be attributed to the decay that has occurred since the reactors were shutdown.

The licensee concluded that the offsite public exposure would be small from routine release, based on the generic estimates of NUREG–0586 and on analyzed exposures for potential accidents (''the largest accident analyzed resulted in an offsite dose of about 0.5 mrem''). The licensee's estimates for transportation related exposures were less than 8.2 person-rem and were also consistent with NUREG–0586, again considering the decay time since shutdown. The licensee has also established an As Low As Reasonably Achievable (ALARA) program to minimize exposure and must ensure that decommissioning activities will not exceed the limits in 10 CFR 20.1301, ''Dose Limits for Individual Members of the Public.''

The anticipated potential exposure to the public after license termination will be negligible. To be released for unrestricted use, the maximum dose to the ''average member of the critical group'' must be less than 25 mrem/yr. The actual dose to the public is expected to be much less than 25 mrem/yr because decontamination will be more extensive than that required to meet minimum license termination requirements and public exposure will not occur for some time because the licensee has no plans to make the site available for public reuse.

Based on its review of the specific proposed activities associated with the dismantling and decommissioning of the PBRF, the NRC staff concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. Non-radiological hazardous materials, including friable lead paint and asbestos insulation, will be managed as described in the decommissioning plan and transported offsite for disposal at a licensed burial site. The proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The three alternatives to the proposed action for the PBFR are SAFSTOR, ENTOMB, and no action.

SAFSTOR (safe storage) is the alternative in which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (delayed decontamination) to levels that permit release for unrestricted use. Implementing this alternative would necessitate continued surveillance and maintenance of the PBRF over a period of time. Impacts during the storage period would be minimal, although there would be substantial monitoring and maintenance costs. Eventually, decontamination and decommissioning would be required. The radiological impacts of delayed decontamination and decommissioning would be comparable to, or slightly less than, those of the proposed action because of radioactive decay prior to DECON.

ENTOMB (entombment) is the alternative in which radioactive contaminants are encased in a structurally long-lived material, such as concrete. The entombed structure would be appropriately maintained and continued surveillance would be necessary over a substantial period of time until radioactivity decayed to a level permitting release of the property for unrestricted use. The time period necessary for entombment has been estimated to last for time frames on the order of a hundred years. The ENTOMB option would result in lower radiological exposure, but would require continued use of resources and would incur the costs associated with such long-term monitoring and maintenance.

The no-action alternative would leave the facility in its present configuration, SAFSTOR, and would limit the activities that the licensee could conduct on the site. However, the regulations in 10 CFR 50.82(b) only allow this condition to exist for a limited period of time.

The licensee has determined that the proposed action (DECON) is the most efficient use of the existing facility, because the SAFSTOR, ENTOMB, and no-action alternatives would entail continued surveillance, maintenance, and physical security measures to be in place and continued monitoring by licensee personnel. The alternatives would also entail the costs associated with these activities.

Alternative Use of Resources

This action does not involve the use of any resources different from those previously committed for construction and operation of the PBRF.

Agencies and Persons Consulted

In accordance with its stated policy, on January 21, 2000, the staff consulted with the State of Ohio official, Ruth Vandegrift, Supervisor Decommissioning for the Ohio Department of Health, Bureau of Radiation Protection regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. The environmental impacts are expected to be bounded by the analyses in NUREG–0586. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 20, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. It is also available at *http://www.nrc.gov/OPA/reports* under ''What's New on This Page,'' ''Decommissioning'' or ''Other Documents.''

Dated at Rockville, Maryland, this 21st day of March 2000.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7576 Filed 3–27–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24346; File No. 812–11862]

Canada Life Insurance Company of America, et al.; Notice of Application

March 22, 2000.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order of approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities.

Summary of Application: Applicants request an order under Section 26(b) of the Act to permit certain registered unit investment trusts to substitute (a) Shares of the Money Market Portfolio (''Fidelity Money Market Portfolio'') of the Fidelity Variable Insurance products Fund (''Fidelity VIP'') for shares of the Money Market Portfolio of the Canada Life of America Series Fund, Inc. (the ''Series Fund''); (2) shares of the Investment Grade Bond Portfolio (''Fidelity Bond Portfolio'') of the Fidelity Variable Insurance Products Fund II (''Fidelity VIP II'') for shares of the Series Fund's Bond Portfolio; (3) shares of the Fidelity VIP's Overseas Portfolio (''Fidelity Overseas Portfolio'') for shares of the Series Fund's International Equity Portfolio; (4) shares of the American MidCap Growth Portfolio (''Alger MidCap Portfolio'') of The Alger American Fund (''Alger'') for shares of the Series Fund's Capital Portfolio; (5) shares of the Fidelity VIP II's Asset Manager Portfolio (''Fidelity Asset Manager Portfolio'') for shares of the Series Fund's Managed Portfolio; and (6) shares of the Fidelity VIP II's Contrafund Portfolio (''Fidelity Contrafund Portfolio'') for shares of the Series Fund's Value Equity Portfolio currently held by those unit investment trusts.

Applicants: Canada Life Insurance Company of America (''Canada Life''), Canada Life Insurance Company of New York (''Canada Life of New York''), Canada Life of America Variable Annuity Account 1 (''the Canada Life Account'') and Canada Life of New York Variable Annuity Account 1 (''the Canada Life of New York Account'') (together, the ''Applicants'').

*Filing Date:*The application was filed on November 19, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 17, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Charles MacPhaul, Esq., Senior Counsel, Canada Life Insurance Company of America, 6201 Powers Ferry Road, N.W., Atlanta, GA 30339. Copy to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Canada Life is a stock life insurance company incorporated under the laws of Michigan. Canada Life is engaged in the business of writing individual annuity contracts in the District of Columbia and all states except New York and Vermont. Canada Life is the depositor and sponsor of the Canada Life Account.

2. Canada Life of New York is a stock life insurance company incorporated under New York law. Canada Life of New York is engaged in the business of writing individual life insurance and annuity contracts in the State of New York. Canada Life of New York is the depositor and sponsor of the Canada Life of New York Account.

3. The Canada Life Account, a separate investment account established under Michigan law, is registered with the Commission as a unit investment trust. The assets of the Canada Life Account support individual flexible premium deferred variable annuity contracts (''Contracts''), and interests in the Canada Life Account offered through such Contracts have been registered under the Securities Act of 1933 (the ''1933 Act'') on Form N–4.

The Canada Life Account is currently divided into twenty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a corresponding investment portfolio (''Portfolio'') of one of nine management investment companies of the series type (''Management Companies'').

4. The Canada Life of New York Account, a separate investment account established under New York law, is registered with the Commission as a unit investment trust. The assets of the Canada Life of New York Account support the Contracts, and interests in the Canada Life of New York Account offered through such Contracts have been registered under the 1933 Act on Form N–4. The Canada Life of New York Account is currently divided into twenty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a Portfolio.

5. The Series Fund, a Maryland corporation, is registered under the Act as an open-end management investment company. The Series Fund is currently comprised of six portfolios, all of which would be involved in the proposed substitutions. The Series Fund issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. CL Capital Management, Inc. serves as the investment adviser to the Series Fund's Bond Portfolio, Money Market Portfolio and to the debt and money market portions of the Managed Portfolio, and, in general, supervises the management and investment program for all of the Series Fund portfolios. The investments of the Capital Portfolio, Value Equity Portfolio, and International Equity Portfolio and the equity portion of the Managed Portfolio are managed by subadvisers that are supervised by CL Capital Management, Inc.

6. Fidelity VIP, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Fidelity VIP is currently comprised of five portfolios, two of which would be involved in the proposed substitutions. Fidelity VIP issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Fidelity Management & Research Company serves as the investment adviser to Fidelity VIP's Portfolios.

7. Fidelity VIP II, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Fidelity VIP II is currently comprised of five portfolios, three of which would be involved in the proposed substitutions. Fidelity VIP II issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Fidelity Management & Research Company serves as the investment adviser to Fidelity VIP II's Portfolios.

8. Alger, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Alger is currently comprised of six portfolios, one of which would be involved in the proposed substitutions. Alger issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Fred Alger Management Inc. serves as the investment adviser to Alger's Portfolios.

9. The Series Fund's Money Market Portfolio seeks as high a level of current income as is consistent with preservation of capital and liquidity. It invests primarily in high-quality U.S. dollar-denominated money market instruments of U.S. and foreign issuers that generally have remaining maturities of thirteen months or less. The Money Market Portfolio's investment adviser complies with industry-standard requirements for money market funds regarding the quality, maturity and diversification of the fund's investments. The investment adviser stresses maintaining a stable $10.00 share price, liquidity and income. The Portfolio's investments are comprised of U.S. government securities, obligations issued or guaranteed as to principal and interest by the Government of Canada, the government of any Canadian province, or any Canadian or provincial Crown agency, obligations such as certificates of deposits and bankers' acceptances of banks, prime commercial paper; and repurchase agreements backed by U.S. government securities.

10. The Series Fund's Bond Portfolio seeks as high a level of current income and capital appreciation as is consistent with preservation of principal. Its primary investments are debt securities, and it normally invests at least 80% of its total assets in U.S. government securities; publicly traded debt instruments rated within the four highest categories by a rating agency; and Canadian government obligations. The Portfolio only invests in U.S. dollar-denominated debt instruments.

11. The Series Fund's International Equity Portfolio seeks long-term capital appreciation by investing inequity or equity type securities of companies located outside the United States. The International Equity Portfolio's subadviser seeks diversification by purchasing securities of at least four different countries that offer varying investment opportunities and are affected by different economic trends. The Portfolio may invest in developed countries, in American Depository Receipts, European Depositary Receipts and up to 30% of its total assets in emerging markets countries. In seeking to limit risks, the Portfolio's exposure is limited as follows: to a single industry group to 25% of its total assets; to a single country, excluding the United Kingdom and Japan, to 25% of its total assets; by normally holding investments in at least 4 countries and at least 40 different companies; and by investing in a minimum of at least 5 to 8 different industry groups.

12. The Series Fund's Capital Portfolio seeks capital appreciation, not current income, by investing in common stocks and securities convertible into or exchangeable for common stocks, in common stock purchase warrants, in debt securities, and in preferred stocks believed to provide capital appreciation opportunities. The Capital Portfolio's subadviser selects common stocks based on their near- or intermediate-term prospects, and its portfolio manager selects stock believed to be underpriced or stocks of growth companies, cyclical companies, or companies believed to be undergoing a basic change for the better. The Capital Portfolio may invest in stocks of companies showing earnings growth and predictability and newer, less-seasoned companies believed to have better-than-average prospects.

13. The Series Fund's Managed Portfolio seeks as high a level of return as possible, through capital appreciation and income, consistent with prudent invesmtent risk and preservation of capital. The Managed Portfolio follows a fully managed investment policy by investing in three types of investments: equities, debt obligations, and money market instruments. There are no maximum or minimum percentages as to the amount of the Portfolio's assets that may be invested in any one type of investment. The Managed Portfolio's investment adviser determines the asset mix based on its overall analysis of the political and economic outlook over the next six to eighteen months, taking into account such factors as inflation, commodity prices, growth, relative values of stocks and bonds, and trends in currency values.

14. The Series Fund's Value Equity Portfolio seeks long-term growth of capital and income by investing in equity securities which are believed to have appreciation potential. The portfolio manager principal approach is to invest in common stocks having depressed values based on poor current

market and appearing undervalued relative to normal earnings power. The portfolio manager chooses investments emphasizing companies with good financial resources, satisfactory rate of return on capital, good industry position, and superior management skills.

15. The Fidelity Money Market Portfolio seeks as high a level of current income as is consistent with preservation of capital and liquidity. The principal investment strategies of the Portfolio's investment adviser include investing in U.S. dollar-denominated money market securities, including U.S. Government securities and repurchase agreements, and entering into reverse repurchase agreements; investing more than 25% of total assets in the financial services industry; and investing in compliance with industry-standard requirements for money market funds for the quality, maturity and diversification of investments. The investment adviser stresses maintaining a stable 41.00 share price, liquidity and income.

16. The Fidelity Overseas Portfolio seeks long-term growth of capital. The principal investment strategies of the Portfolio's investment adviser include investing at least 65% of total assets in foreign securities; investing primarily in common stocks; allocating investments across countries and regions considering the size of the market in each country and region relative to the size of the international market as a whole; and using fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.

17. The Fidelity Bond Portfolio seeks as high a level of current income as is consistent with the preservation of capital. The principal investment strategies of the Portfolio's investment adviser include investing in U.S. dollar-denominated investment-grade bonds; managing the fund to have similar overall interest rate risk to the Lehman Brothers Aggregate Bond Index; allocating assets across different market sectors and maturities; and using analysis of a security's structural features, current pricing and trading opportunities, and the credit quality of its issuer to select investments.

18. The Fidelity Asset Manager Portfolio seeks to obtain high return with reduced risk over the long term by allocating its assets among stocks, bonds, and short-term instruments. The principal investment strategies of the Portfolio's investment adviser include allocating the fund's assets among stocks, bonds, and short-term and money market instruments; maintaining a neutral mix over time of 50% of assets in stocks, 40% of assets in bonds, and 10% of assets in short-term and money market instruments; adjusting allocation among asset classes gradually within the following ranges: stock class (30%–70%), bond class (20%–60%), and short-term/money market class (0%–50%); investing in domestic and foreign issuers; and using analysis off fundamental and/or quantitative factors and evaluation of each security's current price relative to estimated long-term value to select investments.

19. The Alger MidCap Portfolio seeks long-term capital appreciation. The Alger MidCap Portfolio focuses on midsize companies with promising growth potential. Under normal circumstances, the Portfolio invests primarily in the equity securities of companies having a market capitalization within the range of companies in the S&P Mid Cap 400 Index.

20. The Fidelity Contrafund Portfolio seeks long-term capital appreciation. The principal investment strategies of the Portfolio's investment adviser include investing primarily in common stocks; investing in securities of companies whose value it believes is not fully recognized by the public; investing in domestic and foreign issuers; investing in either ''growth'' stocks or ''value'' stocks or both; and using fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.

21. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. Under the Contracts, Canada Life and Canada Life of New York reserve the right to substitute shares of another portfolio of the Management Companies or shares of a different management company. A policyowner may make unlimited transfers (in minimum amounts of $250 or the entire value of the subaccounts of the Accounts or the fixed account that is part of the general account of Canada Life or Canada Life of New York. The first twelve transfers during each policy year are free. Canada Life and Canada Life of New York assess a $25 transfer fee for each transfer in excess of twelve made during a policy year.

22. Since its inception, the Series Fund has been relatively small for several reasons, including the fact that its Portfolios are only offered as funding vehicles for products of Canada Life and Canada Life of New York. As a result, the Series Fund has been able to generate a sufficient level of assets to achieve any significant economies of scale, and has not been able to achieve above-average performance results or otherwise distinguish itself from other Management Companies that offer comparable portfolios. In light of the fact that a number of unaffiliated mutual fund organizations have large and successful insurance product portfolios in which the Accounts could invest, including several that the Accounts already invest in, Canada Life and Canada Life of New York propose substituting shares of the Fidelity VIP, Fidelity VIP II and Alger Portfolios for shares of the Series Fund Portfolios. The Fidelity VIP, Fidelity VIP II and Alger Portfolios are all part of a larger group of funds and have more distribution channels that the Series Fund Portfolios. Although the immediate increase in the size of the Fidelity VIP, Fidelity VIP II and Alger Portfolios as a direct result of the proposed substitutions would be modes, Applicants understand that these Portfolios offer their shares to insurance companies other than Canada Life and Canada Life of New York as investment options under various variable annuity and variable life insurance contracts issued by such companies. Applicants believe that the Fidelity VIP, Fidelity VIP II and Alger Portfolios would offer policyowners invested in them better growth prospects and greater appeal than is currently the case with the Series Fund Portfolios.

23. Canada Life and Canada Life of New York, on their behalf and on behalf of the Canada Life Account and the Canada Life of New York Account, propose to substitute: (1) Shares of the Fidelity Money Market Portfolio for shares of the Money Market Portfolio; (2) shares of the Fidelity Bond Portfolio for shares of the Bond Portfolio; (3) shares of the Fidelity Overseas Portfolio for shares of the International Equity Portfolio; (4) shares of the Alger MidCap Portfolio for shares of the Capital Portfolio; (5) shares of the Fidelity Asset Manager Portfolio for shares of the Managed Portfolio; and (6) shares of the Fidelity Contrafund Portfolio for shares of the Value Equity Portfolio.

24. Certain subaccounts of the Canada Life Account and the Canada Life of New York Account currently invest in shares representing an interest in the Fidelity Overseas Portfolio, Alger MidCap Portfolio, Fidelity Asset Manager Portfolio and Fidelity Contrafund Portfolio. Accordingly, immediately following the substitution transactions, the Canada Life Account and the Canada Life of New York Account would each have two

subaccounts holding shares of Fidelity Overseas Portfolio, two subaccounts holding shares of Alger MidCap Portfolio, two subaccounts holding shares of Fidelity Asset Manager Portfolio, and two subaccounts holding shares of Fidelity Contrafund Portfolio. The Canada Life Account and the Canada Life of New York Account would immediately combine the two subaccounts holding shares of the Fidelity Overseas Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Fidelity Overseas Portfolio to the other subaccount holding shares of the Overseas Portfolio. The Canada Life Account and the Canada Life of New York Account would similarly combine the two subaccounts holding shares of Alger MidCap Portfolio, Fidelity Asset Manager Portfolio, and Fidelity Contrafund Portfolio.

25. With respect to the proposed substitution of shares of the Fidelity Money Market Portfolio for shares of the Money Market Portfolio, both Portfolios share substantially similar investment objectives using similar investment policies by seeking to provide policyowners with as high a level of current income as is consistent with preservation of capital and liquidity. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and better performance than the Money Market Portfolio. The assets of the Fidelity Money Market Portfolio have been significantly greater than the assets of the Money Market Portfolio for each of the past three years. As a result of its size, the Fidelity Money Market Portfolio has been able to achieve economies of scale that the Money Market Portfolio could not attain. These economies of scale are reflected in the fidelity Money Market Portfolio's ratio of total operating expenses to net asset value. Even after the Money Market Portfolio received an expense reimbursement, the Fidelity Money Market Portfolio's expense ratios have been less than one-half those of the Money Market Portfolio over the past three years. Applicants believe that the Fidelity Money Market Portfolio in the near future. Further, the Fidelity Money Market Portfolio has had better cumulative performance than has the Money Market Portfolio during the past three years. Accordingly, this proposed substitution would move policyowners currently invested in the Money Market Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

Money market portfolio[1]	Net assets at year-end	Expense ratio[2] (percent)	Total return (percent)
1996	$7,599,213	0.75	4.58
1997	9,149,393	0.75	4.95
1998	12,309,897	0.75	4.77

[1] The Money Market Portfolio began operations on Dec. 4, 1989.
[2] Before expense reimbursement, the Money Market Portfolio's expense ratios for 1996, 1997, and 1998 were 1.09%, 1.16% and 0.95%, respectively.

Fidelity money market portfolio[1]	Net assets at year-end	Expense ratio (percent)	Total return (percent)
1996	$1,126,155,000	0.30	5.41
1997	1,020,794,000	0.31	5.51
1998	1,507,489,000	0.30	5.46

[1] The Fidelity Money Market Portfolio began operations on April 1, 1982.

26. With respect to the proposed substitution of shares of the Fidelity Bond Portfolio for shares of the Bond Portfolio, both Portfolios have substantially the same investment objective and pursue this objective using similar investment policies. Both Portfolios seek to provide policyowners with as high a level of current income as is consistent with the preservation of capital by investing in U.S. dollar-denominated debt instruments. Applicants believe that the interests of policyowners will be better served by making the proposed substitutions and offering policyowners a Portfolio which has experienced lower expenses and a greater level of assets than the Bond Portfolio in recent years. The assets of the Fidelity Bond Portfolio have been significantly greater than the assets of the Bond Portfolio for each of the past three years. Due to the fact that the Fidelity Bond Portfolio is a much larger Portfolio than the Bond Portfolio, it has been able to take advantage of much greater economies of scale. These economies of scale are reflected in the Fidelity Bond Portfolio's lower expense ratios, which have been approximately one-third less than those of the Bond Portfolio's expense ratios,after expense reimbursement, during the past three years. Applicants believe that the Fidelity Bond Portfolio will continue to have significantly greater assets than the Bond Portfolio, and have no reason to believe, given the limited distribution of the Bond Portfolio, that the Bond Portfolio will match the low expense ratios of the Fidelity Bond Portfolio in the near future. Further, although the Fidelity Bond Portfolio and Bond Portfolio have both experienced approximately the same cumulative performance during the past three years, Applicants have no reason to believe that, in the near future, the performance of the Bond Portfolio will significantly exceed that of the Fidelity Bond Portfolio. Accordingly, this proposed substitution would offer policyowners currently invested in the Bond Portfolio the opportunity to invest in a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

Bond portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$6,712,914	0.90	4.66
1997	7,065,818	0.90	8.09
1998	16,705,618	0.90	9.00

[1] The Bond Portfolio began operations on December 4, 1989.
[2] Before expense reimbursement, the Bond Portfolio's expense ratios for 1996, 1997, and 1998 were 1.08%, 1.02% and 0.92%, respectively.

Fidelity bond portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$228,594,000	0.58	3.19
1997	324,525,000	0.58	9.06
1998	674,813,000	0.57	8.85

[1] The Fidelity Bond Portfolio began operations on December 5, 1988.
[2] The investment adviser has voluntarily agreed to reimburse the Fidelity Bond Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses), as a percentage of its average net assets, exceed 0.80%.

27. With respect to the proposed substitution of shares of the Fidelity Overseas Portfolio for shares of the International Equity Portfolio, both Portfolios seek to provide policyowners with long-term growth of capital by investing primarily in equity or equity type securities of companies located outside the United States. The two Portfolios have substantially similar investment objectives and similar investment policies. Applicants believe that policyowners will be better off if, as proposed, they are offered the Fidelity Overseas Portfolio which in recent years has had a greater level of assets and lower expenses than the International Equity Portfolio. The assets of the Fidelity Overseas Portfolio have been significantly greater than the assets of the International Equity Portfolio for each of the past three years. The Fidelity Overseas Portfolio's ratio of total operating expenses to net asset value, which have been much lower than the International Equity Portfolio's during the past three years, reflect a level of economies of scale that the International Equity Portfolio has not been able to achieve. Applicants believe that the Fidelity Overseas Portfolio will continue to have significantly greater assets than the International Equity Portfolio, and have no reason to believe, given the limited distribution of the International Equity Portfolio, that the International Equity Portfolio will match the low expense ratios of the Fidelity Overseas Portfolio in the near future. Further, although neither Portfolio has consistently outperformed the other during the past three years, this proposed substitution would move policyowners currently invested in the International Equity Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

International equity portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$3,305,190	1.20	19.44
1997	4,771,122	1.20	4.32
1998	6,259,057	1.20	13.37

[1] The International Equity Portfolio began operations on April 24, 1995.
[2] Before expense reimbursement, the International Equity Portfolio's expense ratios for 1996, 1997, and 1998 were 1.56%, 1.32% and 1.47%, respectively.

Fidelity overseas portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$1,667,601,000	0.92	13.15
1997	1,926,322,000	0.90	11.56
1998	2,074,843,000	0.89	12.81

[1] The Fidelity Overseas Portfolio began operations on Jan. 28, 1987.
[2] The investment adviser or the Fidelity Overseas Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997, and 1998 were 0.93%, 0.92% and 0.91%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Overseas Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses), as a percentage of its average net assets, exceed 1.50%.

28. With respect to the proposed substitution of shares of the Alger MidCap Portfolio for shares of the Capital Portfolio, although the Alger MidCap Portfolio invests primarily in the equity securities of companies having a market capitalization within the range of companies in the S&P MidCap 400 Index, it shares substantially the same investment objective as the Capital Portfolio in that both Portfolios seek to provide

policyowners with capital appreciation by focusing on companies with promising growth potential. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and in the past year a higher total return than the Capital Portfolio. The assets of the Alger MidCap Portfolio have been significantly greater than the assets of the Capital Portfolio for each of the past three years. As a result of its size, the Alger MidCap Portfolio has been able to achieve economies of scale that the Capital Portfolio could not attain, which are reflected in the Alger MidCap Portfolio's ratio of total operating expenses to net asset value. Applicants believe that the Alger MidCap Portfolio will continue to have significantly greater assets than the Capital Portfolio, and have no reason to believe, given the limited distribution of the Capital Portfolio, that the Capital Portfolio will match the lower expense ratios of the Alger MidCap Portfolio in the near future. Further, although the Capital Portfolio experienced higher total returns than the Alger MidCap Portfolio in 1996 and 1997, the Alger MidCap Portfolio's total return in 1998 was substantially higher than the Capital Portfolio's return. Applicants believe that this proposed substitution would move policyowners currently invested in the Capital Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

Capital portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$6,676,516	0.90	12.65
1997	6,494,058	0.90	21.14
1998	8,407,733	0.90	20.23

[1] The Capital Portfolio began operations on May 1, 1993.
[2] Before expense reimbursement, the Capital Portfolio's expense ratios for 1996, 1997, and 1998 were 0.99%, 0.99% and 0.99%, respectively.

Alger MidCap portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$394,847,000	0.84	11.90
1997	444,967,000	0.84	15.01
1998	689,571,000	0.84	30.30

[1] The Alger MidCap Portfolio began operations on May 3, 1993.

29. With respect to the proposed substitution of shares of the Fidelity Asset Manager Portfolio for shares of the Managed Portfolio, both Portfolios have substantially the same investment objective and both pursue this objective using similar investment policies. Both Portfolios seek to provide policyowners with high total return, consistent with prudent investment risk, by allocating the Portfolio assets among equities, debt obligations, and short-term and money market instruments. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and better performance than the Managed Portfolio. The assets of the Fidelity Asset Manager Portfolio have been significantly greater than the assets of the Managed Portfolio for each of the past three years. As a result of its size, the Fidelity Asset Manager Portfolio has been able to achieve economies of scale that the Managed Portfolio could not attain. These economies of scale are reflected in the Fidelity Asset Manager Portfolio's lower expense ratios. Applicants believe that the Fidelity Asset Manager Portfolio will continue to have significantly greater assets than the Managed Portfolio, and have no reason to believe, given the limited distribution of the Managed Portfolio, that the Managed Portfolio will match the low expense ratios of the Fidelity Asset Manager Portfolio in the near future. Further, the Fidelity Asset Manager Portfolio has had better cumulative performance than has the Managed Portfolio during the past three years. Accordingly, this proposed substitution would move policyowners currently invested in the Managed Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, higher total returns and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

Managed portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$15,972,639	0.90	5.75
1997	15,277,567	0.90	17.61
1998	13,308,554	0.90	5.15

[1] The Managed Portfolio began operations on Dec. 4, 1989.
[2] Before expense reimbursement, the Managed Portfolio's expense ratios for 1996, 1997, and 1998 were 0.95%, 0.95% and 0.96%, respectively.

Fidelity asset manager portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$3,641,194,000	0.73	14.60

Fidelity asset manager portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1997	4,399,937,000	0.64	20.65
1998	4,905,468,000	0.63	15.05

[1] The Fidelity Asset Manager Portfolio began operations on Sept. 6, 1989.
[2] The investment adviser of the Fidelity Asset Manager Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997 and 1998 were 0.74%, 0.65% and 0.64%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Asset Manager Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses) as a percentage of its average net assets, exceed 1.25%.

30. With respect to the proposed substitution of shares of the Fidelity Contrafund Portfolio for shares of the Value Equity Portfolio, the investment objectives of both Portfolios are substantially similar in that both Portfolios seek long-term capital appreciation, although the Value Equity Portfolio also pursues long-term growth of income. Further, although the Fidelity Contrafund Portfolio's investment policies are broader than those of the Value Equity Portfolio, one of its principal investment strategies parallels the primary approach of the Value Equity Portfolio: to invest in securities which appear to be undervalued. In addition, Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and better overall total returns than the Value Equity Portfolio. The assets of the Fidelity Contrafund Portfolio have been significantly greater than the assets of the Value Equity Portfolio for each of the past three years. As with all of the Portfolios proposed as adequate substitutions for the Series Fund Portfolios, the Fidelity Contrafund Portfolio's size has resulted in greater economies of scale than that of the Value Equity Portfolio. The Fidelity Contrafund Portfolio's expense ratios have been consistently lower than the Value Equity Portfolio's expense ratios over the past three years. Applicants believe that the Fidelity Contrafund Portfolio will continue to have significantly greater assets than the Value Equity Portfolio, and have no reason to believe, given the limited distribution of the Value Equity Portfolio, that the Value Equity Portfolio will match the lower expense ratios of the Fidelity Contrafund Portfolio in the near future. Further, the Fidelity Contrafund Portfolio has experienced higher total returns in 1996 and 1998 than the Value Equity Portfolio. Applicants believe that this proposed substitution would move policyowners currently invested in the Value Equity Portfolio to a much larger fund with a significantly greater level of net assets and lower expense ratios. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following chairs:

Value equity portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$8,519,192	0.90	16.94
1997	10,146,856	0.90	26.93
1998	16,829,336	0.90	2.81

[1] The Value Equity Portfolio began operations on Dec. 4, 1989.
[2] Before expense reimbursement, the Value Equity Portfolio's expense ratios for 1996, 1997, and 1998 were 0.99%, 1.01% and 0.97%, respectively.

Fidelity contrafund portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$2,394,103,000	.71	21.22
1997	4,107,868,000	.68	24.14
1998	6,388,592,000	.66	29.98

[1] The Fidelity Contrafund Portfolio began operations on January 3, 1995.
[2] The investment adviser of the Fidelity Contrafund Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997 and 1998 were 0.74%, 0.71% and 0.70%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Contrafund Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses) as a percentage of its average net assets, exceed 1.00%.

31. Canada Life and Canada Life of New York will redeem the shares of the Series Fund Portfolios for cash and use the redemption proceeds to purchase shares of the Fidelity VIP, Fidelity VIP II and Alger Portfolios. The proposed substitutions will take place at relative net asset value with no change in the amount of any policyowner's policy value, cash value or death benefit or in the dollar value of his or her investment in either of the Accounts. As a result, policyowners will remain fully invested. Policyowners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Canada Life's and Canada Life of New York's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Canada Life and Canada Life of New York. In addition, the proposed substitutions will not impose any tax liability on policyowners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing policyowners to be greater after

the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a policy year. Canada Life and Canada Life of New York will not exercise any right they may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions.

32. By supplements to the various prospectuses for the Contracts and the Accounts, Canada Life and Canada Life of New York will notify all owners of the Contracts of their intention to effect the substitutions. The supplements advise policyowners that from the date of the supplement until the date of the proposed substitution, they are permitted to make one transfer of all amounts which are invested, as of the date of the supplement, in any one of the affected subaccounts to another subaccount (other than one of the other affected subaccounts) without that transfer counting as a ''free'' transfer under the Contract. The supplements also inform policyowners that Canada Life and Canada Life of New York will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

33. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitutions are effected, any policyowners who were affected by the substitutions will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all policy value or cash value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount available under their Contract or to the fixed account without that transfer counting as one of any limited number of transfers permitted in a policy year or as one of a limited number of transfers permitted in a policy year free of charge. The notice will also reiterate the fact that Canada Life and Canada Life of New York will not exercise any rights reserved by them under the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, policyowners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by Canada Life and Canada Life of New York (or one of their affiliates) during the 60 days following the proposed substitutions. The notices will be preceded or accompanied by current prospectuses for Fidelity VIP, Fidelity VIP II and Alger.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states that.

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act and request that the Commission issue an order pursuant to Section 26(b) of the Act approving the substitutions.

3. The Contracts expressly reserve for Canada Life and Canada Life of New York the right, subject to compliance with applicable law, to substitute shares of another Management Company for shares of a Management Company held by a subaccount of the Canada Life Account or the Canada Life of New York Account. The prospectuses for the Contracts and the Canada Life Account and the Canada Life of New York Account contain appropriate disclosure of this right.

4. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by Canada Life and Canada Life of New York. Applicants assert that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants assert that the Fidelity VIP, Fidelity VIP II and Alger Portfolios would offer policyowners better growth prospects than the Series Fund Portfolios do. The Fidelity VIP, Fidelity VIP II and Alger Portfolios are all part of a larger group of funds and have more distribution channels than the Series Fund Portfolios. Applicants therefore believe that the Fidelity VIP, Fidelity VIP II and Alger Portfolios will offer greater appeal and the capacity for faster future growth to potential future investors than would the Series Fund Portfolios. Further, the investment objectives of the Series Fund Portfolios are substantially similar if not identical to those of their corresponding Fidelity VIP, Fidelity VIP II, and Alger Portfolios, with such objectives being pursued using the same or similar investment policies. Accordingly, although the Fidelity VIP, Fidelity VIP II and Alger Portfolios and the Series Fund Portfolios do not share the same investment adviser, Applicants assert that the proposed substitutions will result in an array of subaccounts that not only continue to meet policyholders' investment expectations and maintain investment flexibility, but that are essentially the same as the array offered prior to the substitution, except that the underlying portfolios will be larger with lower expense ratios. For these reasons, Applicants assert that policyowners would benefit from the proposed substitutions.

6. Applicants assert that each of the substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each policyowner with the right to exercise his or her own judgment and transfer policy or cash values into other subaccounts. Moreover, the Contracts will offer policyowners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants assert that the substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

7. Applicants further assert that the proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, policyowners select much more than a particular investment company in which to invest their account values. Applicants believe that they also select the specific type of insurance coverage offered by Canada Life and Canada Life of New York under their contract as well as numerous other rights and privileges set forth in the Contract. Applicants assert that policyowners may also have considered Canada Life's and Canada Life of New York's size, financial condition, type and their reputation for service in selecting their Contract. Applicants maintain that these factors will not

change as a result of the proposed substitutions.

Conclusion

Applicants assert that, for the reasons summarized above, the substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7584 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24344; 812–11430]

Equity Investor Fund, et al.; Notice of Application

March 21, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1)(F)(ii) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit certain unit investment trusts (''UITs'') relying on section 12(d)(1)(F) of the Act to offer units with a sales load in excess of the limit in section 12(d)(1)(F)(ii) of the Act. In addition, the requested order would permit a terminating series of a UIT to sell certain investment company shares to a new series of the UIT.

APPLICANTS: Merrill Lynch, Pierce, Fenner & Smith Incorporated (''Merrill Lynch''), Salomon Smith Barney Inc., Dean Witter Reynolds Inc. and Paine Webber Incorporated (collectively, the ''Sponsors''); and the Equity Investor Fund (''EIF'').

FILING DATES: The application was filed on December 10, 1998 and amended on April 20, 1999 and March 7, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 17, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, P.O. Box 9051, Princeton, NJ 08543–9051.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. EIF is registered under the Act as a UIT and is sponsored by one or more of the Sponsors. EIF consists of multiple series (''Series''), each created by a trust indenture between the Sponsors and a financial institution that satisfies the criteria of section 26(a) of the Act (the ''Trustee''). Each Sponsor is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (''NASD''). Applicants request relief for each subsequently-issued Series and for any future registered UIT that is sponsored by one or more of the Sponsors and which becomes party to the trust indenture.

2. Each Series will contain a portfolio of equity securities (''Fund Shares'') issued by registered investment companies that are not affiliated with any of the applicants (the ''Funds''). The Funds may be closed-end investment companies (''Closed-end Funds''), open-end investment companies (''Open-end Funds''), UITs or investment companies that are registered under the Act as open-end investment companies or UITs but have received exemptive relief under the Act to permit their shares to trade at negotiated prices on a national securities exchange (''Exchange-Traded Funds''). The Sponsors will deposit Fund Shares in a Series at the Fund Shares' net asset value (in the case of Open-end Funds and UITs) or at their market value (in the case of Closed-end Funds and Exchange-Traded Funds). Market value will be a Fund's closing sale price on a national securities exchange or the Nasdaq National Market System (''Nasdaq-NMS'') or, if unavailable, at the closing ask prices as determined by the Trustee.

3. Simultaneously with the deposit of Fund Shares, the Trustee will deliver to the Sponsors units (''Units'') which represent the entire ownership of the Series. These Units will in turn be offered for sale to the public by the Sponsors. The Units will be offered at prices based on the aggregate value of the Fund Shares deposited (plus any cash, receivables (including dividends receivable) and any other assets of the Series less accrued liabilities), plus a sales charge and organization costs. The sales charges on the Units will not, when aggregated with any sales charge, distribution fees and service fees paid by the Series with respect to Fund Shares, exceed the limits set forth in rule 2830 of the NASD's Conduct Rules. Although a Series may invest in a Fund with an asset-based sales charge exceeding .25% of the Fund's average net assets, any fees paid by a Fund to the Sponsors or the Trustee will be rebated to the Series and used to reduce the Series' expenses.

4. The portfolios of certain Series may be selected based on an asset allocation model or other selection criteria, which the investment strategy requires to be reapplied periodically. These Series (''Rollover Series'') may terminate approximately one or two years after they are offered for sale. At that time, the Sponsors intend to create and offer a new Series (''New Series''), the portfolio of which will reflect the current asset allocation model or reapplication of the selection process and may contain the same Fund Shares as the Rollover Series. Investors in the Rollover Series may elect to invest in the New Series.

5. Applicants request relief to permit a Rollover Series to sell Fund Shares to the New Series. In order to minimize the potential for overreaching, Merrill Lynch as agent for the Sponsors will certify in writing to the Trustee, within five days of each sale of Fund Shares from a Rollover Series to a New Series: (a) That the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statement and reports filed under the Act, (b) the date of the transaction, and (c) the net asset value of the Fund in the case of an Open-end Fund or UIT, or the closing sale price on a national securities

exchange or Nasdaq-NMS in the case of a Closed-end Fund or Exchange Fund. The Trustee will then countersign the certificate unless, in the event the Trustee disagrees with a price listed on the certificate, the Trustee immediately informs Merrill Lynch orally of any such disagreement and return the certificate within five days to Merrill Lynch with corrections duly noted. Upon Merrill Lynch's receipt of a corrected certificate, Merrill Lynch and the Trustee will jointly determine the correct closing sale price by reference to a mutually agreeable, published list of prices for the date of the transaction.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to securities purchased or otherwise acquired by a registered investment company if, immediately after the purchase or acquisition, not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company and all affiliated persons of the acquiring company, and the acquiring company does not impose a sales load on its shares of more than 1.5%. In addition, no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Series will invest in Fund Shares in reliance on section 12(d)(1)(F).

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit a Series relying on section 12(d)(1)(F) to offer Units with a sales load in excess of 1.5%. For the reasons stated below, applicants believe that the requested relief meets the standards of section 12(d)(1)(J).

4. While each Series may charge a sales load, the Sponsors will deposit the Fund Shares at net asset value (*i.e.,* without any sales charge). To further limit the extent to which unitholders may pay indirectly for distribution costs of the underlying Funds, any fees paid by a Fund to the Sponsors or the Trustee will be rebated to the Series. Applicants also have agreed, as a condition to the requested relief, that any sales charges, distribution related fees, and service fees relating to Units, when aggregated with any sales charges, distribution related fees, and service fees paid by the Series relating to its acquisition, holding, or disposition of Fund Shares, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement in place of the sales load limitation in section 12(d)(1)(F). As a result, the aggregate sales charges will not exceed the limit that otherwise could be charged at any single level.

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Applicants submit that the Series may be deemed to be affiliated persons of one another by virtue of being under common control because they have one or more common Sponsors. The Series therefore may be unable to sell and purchase Fund Shares to and from each other without an exemption from section 17(a) of the Act. Accordingly, applicants request relief to permit a Rollover Series to sell Fund Shares to a New Series (''Rollover Transactions'').

2. Section 17(b) of the Act permits the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. For the reasons stated below, applicants believe that the terms of the Rollover Transactions meet the standards of sections 6(c) and 17(b) of the Act.

3. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliated persons solely by reason of having a common investment adviser, directors, and/or officers, to purchase securities from or to sell securities to one another, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraphs (b) and (e).

4. Rule 17a–7(b) requires that the transactions be effected at the independent current market price of the security. Shares of Open-end Funds and UITs would fall within the category of ''all other securities'' in paragraph (b)(4) of the rule, for which the current market price under rule 17a–7(b) is the average of the highest current independent bid and the lowest current independent offer determined on the basis of reasonable inquiry. Applicants state that shares of Open-end Funds and UITs do not trade at a bid or offer price but at an independently-determined net asset value.

5. Rule 17a–7(e) requires an investment company's board of directors to adopt and monitor procedures for transactions effected pursuant to the rule to assure compliance with the rule. Because a UIT does not have a board of directors, applicants state that there can be no board review of the Rollover Transactions.

6. Applicants submit that engaging in Rollover Transactions will not disadvantage either the Rollover Series or the New Series. Applicants note that Rollover Transactions may reduce costs to unitholders of the Series. In addition, the Rollover Transactions will be consistent with the policy of each Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Series will be involved in the Rollover Transactions.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution-related fees, and service fees relating to the Units, when aggregated with any

sales charges, distribution-related fees and service fees paid by a Series relating to its acquisition, holding or disposition of Fund Shares, will not exceed the limits set forth in rule 2830(d) for the NASD Conduct Rules.

3. Each sale of Fund Shares between the Series will be effected at the net asset value of the Fund Shares as determined by the Fund on the sale date or, if traded on a national securities exchange or Nasdaq-NMS, the closing sale price on the sale date. Such sales will be effected without any brokerage commissions or other remuneration except customary transfer fees, if any.

4. The nature and conditions of such transactions will be disclosed to investors in the prospectus of each Series.

5. The Trustee of each Rollover Series and New Series will (a) review the procedures relating to the sale of Fund Shares from a Rollover Series and the purchase of Fund Shares for deposit in a New Series and (b) make such changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a), (c) and (d) of rule 17a–7.

6. A written copy of these procedures and a written record of each transaction effected pursuant to the requested order will be maintained as provided in rule 17a–7(f).

7. No Series will acquire securities of a Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

8. No Series will terminate within 30 days of the termination of any other Series that holds shares of one or more common Funds.

9. The prospectus of each Series and any sales literature or advertising that mentions that existence of an in-kind distribution option will disclose that unitholders who elect to receive Fund Shares will incur any applicable rule 12b–1 fees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7532 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42543; File No. SR–Amex–99–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to Investment Series of the iShares℠ Trust Based on Foreign Stock Indexes

March 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list the trade under rules 1000A *et seq.* (''Index Fund Shares'') series of the iShares℠ Trust based on stock indexes that consist in whole or part of foreign stocks. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex rules 1000A *et seq.* provide for the listing and trading of Index Fund Shares, which are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index.[3] The Exchange currently lists under Amex rules 1000A *et seq.* seventeen series of World Equity Benchmark Shares℠ (''WEBS™'') based on Morgan Stanley Capital International foreign stock indices;[4] and nine series of Select Sector SPDRs® based on Select Sector Indexes comprised of stocks representing various industry sectors and included in the S&P 500® Index.[5]

The Exchange proposes to list and trade under Amex rules 1000A *et seq.* the following investment series (each a ''Fund'' and collectively, the ''Funds'') of the iShares℠ Trust[6] (''Trust'') based on indexes (referred to herein as ''Underlying Indices'') comprised in whole or part of equity securities issued by foreign issuers as follows: (1) iShares S&P Europe 350 Fund and (2) iShares S&P/TSE 60 Fund.

In addition to the Funds listed above, the Trust's Investment Company Act of 1940 (''1940 Act'') exemptive application requests that the exemptive relief sought in the Application apply to Funds (referred to herein as ''Additional Funds'') based on the following indexes: (1) S&P Euro Index; (2) Dow Jones Global Media Sector Index; (3) Dow Jones Global Pharmaceuticals Sector Index; and (4) Dow Jones Global Telecommunications Sector Index. Funds on these indexes will not be the subject of the Trust's initial registration statement, which will cover, among other Funds,[7] the iShares S&P Europe 350 Fund and the iShares S&P/TSE 60 Fund. The Exchange proposes to list and trade the Additional Funds, listed above, that are the subject of the Trust's 1940 Act exemptive application after an effective registration statement is in place for those funds. All descriptions herein that apply to the two proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[4] ''World Equity Benchmark Shares'' and ''WEBS'' are service marks of Morgan Stanley Group, Inc. *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999).

[5] ''S&P®'', ''S&P 500®'' and ''SPDRs®'' are trademarks of The McGraw-Hill Companies, Inc., and ''Selected Sector SPDR'' is a service mark of The McGraw-Hill Companies, Inc., *See* Securities Exchange Act Release 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998).

[6] The Trust has filed with the Commission an Application for Orders (''Application'') under Sections 6(c) and 17(b) of the Investment Company Act of 1940 (''1940 Act'') as amended, for the purpose of exempting the Trust from various provisions of the 1940 Act and Amex Rules thereunder (File No. 812–11598).

[7] *See* File No. SR–Amex–99–48 for a description of iShares Funds based on indexes composed of stocks traded in the U.S.

iShares Funds also apply to the Additional Funds.

A detailed description of each Underlying Index for the iShares Funds and the Additional Funds, as prepared by the compilers of the Underlying Indices, is available in the Commission's public reference room as Exhibit B. These descriptions include information regarding component selection criteria, issue changes, index maintenance, index availability, index description, and industry group distribution by market capitalization.

''*Passive*'' *or Indexing Investment Approach.* The investment objective of each Fund is to provide investment results that, before expenses, correspond generally to the price and yield performance of companies in the Underlying Index. In seeking to achieve the respective investment objective of each Fund, Barclays Global Fund Advisors, (''the Adviser''), will utilize some variety of ''passive'' or indexing investment approach. Certain Funds will use a replication strategy by which an index fund seeks to match an Underlying Index's performance, before fees and expenses, by buying and selling all of the Underlying Index's securities in the same proportion as they are reflected in the Underlying Index. These Funds reserve the right not to invest in every security in the Underlying Index if the Adviser believes it is not practical to do so under the circumstances. It is anticipated that the iShares S&P/TSE 60 Fund will use a replication strategy.

Representative Portfolio Sampling Approach. Other Funds may not hold all or most of the securities in the Underlying Index (''Component Securities''). This may be the case, for example, when there are substantial costs involved in compiling an entire Underlying Index basket that contains scores of Component Securities or, in certain instances, when a Component Security is illiquid. In cases such as these, a Fund will attempt to hold a representative sample of the Component Securities in the Underlying Index, which will be selected by the Adviser utilizing quantitative analytical models in a strategy known as ''representative portfolio sampling.'' It is anticipated that the iShares S&P Europe 350 Fund will use this technique.

No Fund will concentrate (*i.e.,* hold more than 25% of its assets in the stocks of a single industry or a group of industries) its investments in issuers of one or more particular industries, except that a Fund will concentrate to the extent that its Underlying Index concentrates in the stocks of such particular industry or industries.

Under this strategy, each security is considered for inclusion in a Fund based on its contribution to certain capitalization, industry, and fundamental investment characteristics. The Adviser will seek to construct the portfolio of a Fund so that it will have capitalization, industry and fundamental investment characteristics that perform like those in the corresponding Underlying Index. From time to time, adjustments, will be made in the portfolio of each Fund in accordance with changes in the composition of the Underlying Index, or to maintain compliance as a ''regulated company'' under the Internal Revenue Code.[8] Certain of these Funds may also hold some securities that are not components of the relevant Underlying Index if the Adviser decides it is appropriate in view of such Funds' investment objectives and investment or tax constraints. If the representative portfolio sampling technique is used, a Fund will not be expected to track its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying with the same weighting as the Underlying Index. It is anticipated that, over time, the Adviser in such case will be able to employ representative portfolio sampling techniques such that the expected tracking error of a Fund relative to the performance of its Underlying Index will be less than 5 percent.

Procedures for Creation and Redemption of iShares of the Funds. Procedures for the creation and redemption of iShares of the proposed Funds similar to procedures for creation and redemption of certain other Index Fund Shares based on a foreign stock index currently listed on the Amex (*i.e.,* WEBS), which do not utilize processes of the National Securities Clearing Corporation (''NSCC'') in connection with the transmittal of trade instructions, the transfer of component securities and the cash component, and the transfer of iShares on creation and redemption. In contrast, creation and redemption procedures applicable to Portfolio Depositary Receipts, such as SPDRs and Index Fund Shares, such as Select Sector SPDRs based on domestic stock indexes, utilize such NSCC processes.

Purchase or Creation of Creation Unit Aggregations. The Trust will issue and sell iShares of each Fund only in Creation Unit Aggregations[9] on a continuous basis through the distributor, SEI Investments Distribution Company (''the Distributor''), without a sales load at their net asset value (''NAV'') next determined after receipt, on any business day, of an order in proper form. The consideration for purchase of Creation Unit Aggregations of a Fund generally consists of the in-kind deposit of a designated portfolio of equity securities (the ''Deposit Securities'') per each Creation Unit Aggregation of the stocks and weightings in the relevant Fund's portfolio (''Fund Securities'') and an amount of cash (the ''Cash Component'') computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of any Fund. The Trust will impose a Transaction Fee in connection with the creation and redemption of Creation Unit Aggregations.

The Cash Component is an amount equal to the Balancing Amount. The ''Balancing Amount'' is an amount equal to the difference between the NAV of the iShares (per Creation Unit Aggregation) and the ''Deposit Amount,'' an amount equal to the market value of the Deposit Securities. If the Balancing Amount is a positive number, (*i.e.,* the NAV per Creation Unit Aggregation exceeds the Deposit Amount), the Cash Component will be paid to the Trust by the creator. If the Balancing Amount is a negative number, (*i.e.,* the NAV per Creation Unit. Aggregation is less than the Deposit Amount), the creator will receive cash in an amount equal to the differential.

The Adviser, through NSCC will make available on each Business Day immediately prior to the opening of business on the Amex, currently 9:30 a.m., New York time, the list of the

[8] In order for a Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50 percent of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5 percent of the value of the Fund's assets and not greater than 10 percent of the outstanding voting securities of such issuer, and (2) not more than 25 percent of the value of its total assets may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or business or related trades or business (other than U.S. government securities or the securities of other regulated investment companies.)

[9] iShares cannot be redeemed individually but must be redeemed in Creation Unit Aggregations applicable to the specific Fund.

names and the required number of shares of each Deposit Security to be included in the current Fund Deposit for each Fund. Such Fund Deposit is applicable, subject to any adjustments, to effect creations of Creation Unit Aggregations of a given Fund, until such time as the next-announced composition of the Deposit Securities is made available.

It is anticipated that the deposit of Deposit Securities and the Cash Component in exchange for iShares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Creation Unit Aggregations are separable upon issuance into identical shares that are listed and traded on the Amex.

Redemption of Creation Unit Aggregations. Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Distributor and only on a business day. Immediately prior to the opening of business on the Amex on each business day, the Adviser, through NSCC, will identity the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests for each Fund received in proper form on that day. Fund securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit Aggregation generally consist of Fund Securities—as announced by the Adviser on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the iShares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount'').

If it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem iShares in cash, and the redeeming beneficial owner will be required to receive redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its iShares based on the NAV of iShares of the relevant Fund next determined after the redemption request is received in proper form. A Fund may also, in its sole discretion, upon request of a shareholder, provide the redeemer a portfolio of securities that differs from the exact composition of the Fund Securities but does not differ in NAV.

Availability of Information Regarding Fund Shares and Underlying Indices. In addition to the list of names and amount of each security constituting the current Deposit Securities of the Portfolio Deposit, the Cash Component effective as of the previous business day, per outstanding share of each Fund, is expected to be made available each business day. The Exchange expects to disseminate, every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association (''CTA''), an amount per Fund Share representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis.

The value of each Underlying Index will be updated intra-day on a real time basis as individual Component Securities change in price. These intra-day values of the Underlying Indices will be disseminated every 15 seconds throughout the trading day. In addition, these organizations will disseminate a value for each Underlying Index once each trading day, based on closing prices in the relevant exchange market. Each Fund will make available on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the cash-balancing amount. The NAV for each Fund will be calculated and disseminated daily. In addition, the Adviser maintains a website that provides information about the returns and methodology of various indices, and will include the relevant Underlying Index for each Fund. The Trust also intends to maintain a website that will include the relevant prospectuses and additional quantitative information that is updated on a daily basis, including daily trading volume and closing price for each Fund. The Amex also intends to disseminate a variety of data with respect to each Index Series on a daily basis by means of CTA and Consolidated Quotation High Speed Lines, including shares outstanding and cash amount per Creation Unit Aggregation, which will be made available prior to the opening of the Amex. The closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

Dissemination of Indicative Portfolio Value. In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem iShares based on indexes with non-U.S. components, it is expected that the Exchange will disseminate through the facilities of the CTA an updated indicative portfolio value (''Value'') for each of the Funds traded on the Exchange as calculated by a securities information provider (''Value calculator''). It is anticipated that the methodology utilized in connection with the Funds will be similar to procedures used to calculate the Value for WEBS currently trading on the Exchange. The Value will be disseminated on a per iShares basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time. The equity securities values included in the Value are the values of the Deposit Securities, which are the same as the portfolio that is to be utilized generally in connection with creations and redemptions of iShares in Creation Unit Aggregations on that day. The equity securities included in the Value reflects the same market capitalization weighting as the Deposit Securities in the portfolio for the particular iShares Fund. In addition to the value of the Deposit Securities for each Fund, the Value includes the Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the Value on a per iShares basis disseminated during Amex trading hours should not be viewed as a real time updated of the NAV of a particular Fund, which is calculated only once a day. While the Value that will be disseminated by the Amex at 9:30 a.m. is expected to be generally very close to the most recently calculated Fund NAV on a per iShares basis, it is possible that the value of the portfolio of securities held by a Fund may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio.

However, during the trading day, the Value can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.,* in the case of extensive

rebalancing of multiple securities in a Fund at the same time by the Advisor). The circumstances that might cause the Value to be based on calculations different from the valuation per Fund share of the actual portfolio of a Fund would not be different than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each Fund that would not otherwise be available to the public and is useful to professionals and investors in connection with iShares trading on the Exchange or the creation or redemption of iShares.

For each Fund the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principles foreign market(s) for securities in the Fund portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during the Amex trading hours to reflect change in currency exchange rates between the U.S. dollars and the applicable foreign currency. The Value will also include the applicable Cash Component for each Fund.

For Funds that include foreign stocks, the principal foreign markets for which have trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close.

Other Characteristics of iShares. It is anticipated that a minimum of two Creation Unit Aggregations for each Fund will be outstanding at the commencement of trading on the Exchange. The number of shares per Creation Unit Aggregation is anticipated to be approximately 50,000 shares.

Funds shares will be registered in book-entry form through the Depository Trust Company (''DTC''). Trading in Funds shares on the Exchange will be effected until 4:15 p.m. each business day. The minimum trading increment under Amex rule 127 for Fund Shares will be 1/64 of $1.00.

Dividends from net investment income will be declared and paid at least annually by each Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but each Fund may make distributions on a more frequent basis to comply with Internal Revenue Code distribution requirements. Certain of the Funds intend to make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

The Exchange, in an information circular, will inform member firms, prior to commencement of trading, that investors purchasing iShares will be required to receive a fund prospectus prior to or concurrently with the confirmation of a transaction therein.[10]

Original and Annual Listing Fees. The Amex original listing fee applicable to the listing of iShares is $5,000 for each Fund. In addition, the annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares for all Funds combined.

Stop and Stop Limit Orders. Amex rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security other than an option, which is covered by Amex rule 950(f) and Commentary thereto, the price of which is derivatively priced based upon an other security or index of securities, may with the prior approval of a Floor Official be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated iShares as eligible for this treatment.[11]

Trading Halts. In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex rule 918C(b) in exercising its discretion to halt or suspend trading in a Fund. These factors would include: (1) The extent to which trading is not occurring in stocks underlying the specific underlying index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in iShares will halt in the event that market-wide circuit breakers are triggered pursuant to Amex rule 117.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Amex Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be

[10] In its 1940 Act exemptive application, the Trust requests relief from the prospectus delivery requirements imposed by Section 24(d) of the 1940 Act. The Exchange will inform member firms of the prospectus delivery requirements applicable at commencement of trading.

[11] *See* Securities Act Release No. 29063, note 9, (SR–Amex–90–31) regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–49 and should be submitted by April 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7533 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42542; File No. SR–Amex–00–14]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Generic Standards Applicable to Listing Portfolio Depositary Receipts and Index Fund Shares Pursuant to Rule 19b–4(e)

March 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder, notice is hereby given that on March 6, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to add new Commentary .03 to Amex Rule 1000 (Portfolio Depositary Receipts) and New Commentary .02 to Amex Rule 1000A (Index Fund Shares) to provide standards to permit listing and trading of Portfolio Depositary Receipts (''PDR'') and Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[3] Below is the text of the proposed rule change. Proposed new language is in italics.

Portfolio Depositary Receipts

Rule 1000 No change.

* * * Commentary

.01 No change.
.02 No change.

.03 The Exchange may approve a series of Portfolio Depositary Receipts for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depositary Receipts on the Exchange, the component stocks of an index or portfolio underlying such series of Portfolio Depositary Receipts shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks; and

(5) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Portfolio Depository Receipts will be calculate based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depositary Receipts an estimate, undated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depositary Receipts is required to be outstanding at start-up of trading.

(e) Trading Increment. The minimum trading increment for a series of Portfolio Depositary Receipts shall be 1/64 of $1.00.

(f) Listing Fees. The original listing fee is $5,000 for each series of Portfolio Depositary Receipts. The annual listing fee under Section 141 of the Amex Company Guide will be based upon the number of a series of Portfolio Depositary Receipts outstanding at the end of each calendar year.

(g) Surveillance Procedures. The Exchange will implement written surveillance procedures for Portfolio Depositary Receipts.

(h) Applicability of Other Rules. The provisions of Rules 1000 et seq. will apply to all series of Portfolio Depositary Receipts.

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Index Fund Shares

Rule 1000A No change.

* * * Commentary

.01 No change.

.02 The Exchange may approve a series of Index Fund Shares of listing pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks; and

(5) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market.)

(b) Index Methodology and Calculation. (i) The index underlying a

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] 17 CFR 240.19b–4(e).

series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(e) Trading Increment. The trading increment may vary among different series of Index Fund Shares but will be set at 1/16, 1/32 or 1/64 of $1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Listing Fees. The original listing fee is $5,000 for each series of Index Fund Shares. The annual listing fee under Section 144 of the Amex Company Guide will be based upon the number of shares of a series of Index Fund Shares outstanding at the end of each calendar year. For multiple series of Index Fund Shares issued by an opened management investment company, the annual listing fee will be based on the aggregate number of shares in all series outstanding at the end of each calendar year.

(h) Surveillance Procedures. The Exchange will implement written surveillance procedures for Index Fund Shares.

(i) Applicability of Other Rules. The provisions of Rules 1000A et seq. will apply to all series of Index Fund Shares.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of PDR securities, which represent interests in an unit investment trust (''Trust'') that operates on an open-end basis and holds a portfolio of securities.[4] Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The first Trust be formed in connection with the issuance of PDR was based on the Standard & Poor's 500 Index, known as Standard & Poor's Depositary Receipts® (''SPDRs''®), which have been trading on the Exchange since January 29, 1993.[5] In 1995, the Commission approved Amex's listing and trading of PDR based on the Standard & Poor's MidCap 400 Index™ (''MidCap SPDRs™'').[6] In January 1998, the Commission approved the listing and trading of PDR based on the Dow Jones Insustrial Average℠ (''DIAMONDs℠'').[7] Most recently, on February 26, 1999, the Commission approved Nasdaq-100 Shares™, which are PDR based on the Nasdaq-100® Index.[8] The Commission first approved Amex's listing and trading of Index Fund Shares under Amex Rules 100A *et seq.* in 1996.[9] Index Fund Shares are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of specified foreign or domestic equity index. The Exchange currently lists under Amex Rules 1000A *et set.* seventeen series of World Equity Benchmark Shares℠ (''WEBS™'') based on Morgan Stanley Capital International foreign stock indices;[10] and nine series of Select Sector SPDRs® based on Select Indexes comprised of stocks representing various industry sectors and included in the S&P 500® Index.[11]

The Exchange proposes to amend Amex Rules 1000 and 1000A to provide standards to permit listing and trading of PDR and Index Fund Shares pursuant to Rule 19b–4(e) under the Act. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.[12]

As noted above, the Commission has previously approved Amex Rules 1000 *et seq.* and 1000A *et seq.* to permit listing and trading of PDR and Index Fund Shares. In approving these securities for Exchange trading, the Commission thoroughly considered the structure of these securities, their usefulness to investors and to the markets, and the Amex rules that govern their trading. Moreover, the Exchange has separately filed proposed rule changes pursuant to Rule 19b–4 for each

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[4] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992). ''PDRs'' us a service mark of PDR Services LLC, a wholly-owned subsidiary of the Exchange.

[5] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

[6] Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995). ''Standard & Poor's 500,'' ''Standard & Poor's MidCap 400 Index,'' ''Standard & Poor's Depositary Receipts®,'' ''SPDRs®,'' ''Standard & Poor's MidCap 400 Depositary Receipts'' and ''MidCap SPDRs'' are trademarks of the McGraw-Hill Companies, Inc.

[7] Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998). ''Dow Jones Industrial Average℠,'' ''DJIA℠'' ''Dow Jones℠'' and ''DIAMONDS'' are each trademarks and service marks of Dow Jones & Company, Inc.

[8] Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999). The ''Nasdaq-100 Index®,'' ''Nasdaq-100®,'' ''Nasdaq®, ''and ''The Nasdaq Stock Market®'' are trademarks of Nasdaq and have been licensed for use for certain purpose by Investment Product Services, Inc. pursuant to a License Agreement with Nasdaq.

[9] Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[10] *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999). ''World Equity Benchmark Shares'' and ''WEBS'' are service marks or Morgan Stanley Group, Inc.

[11] *See* Securities Exchange Act Release No. 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998) ''Select Sector SPDR'' is a service mark of The McGraw-Hill Companies, Inc.

[12] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

series of PDR or Index Fund Shares currently trading on the Exchange. The Exchange believes that application of Rule 19b–4e to such securities will further the intent of that rule by facilitating commencement of trading in these securities, subject to the proposed generic standards for PDR and Index Fund Shares, discussed below, without the need for notice and comment and Commission approval under Section 19(b) of the Act. This has the potential to reduce the time frame for bringing such securities to market.

The Exchange is proposing that PDR and Index Fund Shares listed pursuant to Rule 19b–4(e) be subject to specific generic criteria as set forth in proposed Amex Rule 1000, Commentary .03 (for PDR) and Amex Rule 1000A, Commentary .02 (for Index Fund Shares). The Exchange notes that all other provisions of Amex Rules 1000 *et seq.* and 1000A *et seq.* will continue to apply to such securities.

The Exchange is proposing to implement generic listing criteria that are intended to ensure that a substantial portion of the weight of an index or portfolio is accounted for by stocks with substantial market capitalization and trading volume. Proposed Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02 would both provide that, upon the initial listing of a series of PDR or Index Fund Shares under Rule 19b–4(e), component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have minimum market value of at least $75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio.

The most heavily weighted component stock in an underlying index cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks, which is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code.[13] All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

Proposed Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02 provide that the underlying index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Reporting Authority will disseminate for each series of PDR and Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of PDR or index Fund Shares will be required to be outstanding at start-up of trading. The Exchange believes this minimum number is sufficient to establish a liquid Exchange market at the start of trading.

The minimum trading increment for a series of PDR will be 1/64 of $1.00, and for Index Fund Shares will be 1/16, 1/32 or 1/64 of $1.00, as determined by the Exchange for a specific series.

The original listing fee for each series of PDR and Index Fund Shares will be $5,000. The annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the number of shares of a series of PDR outstanding at the end of each calendar year. For funds with multiple series of Index Fund Shares, shares in all series outstanding at year end will be aggregated for purposes of the annual listing fee under Section 141 of the Amex *Company Guide.*

The Exchange will implement written surveillance procedures for PDR and Index Fund Shares. In addition, the Exchange will comply with all recordkeeping requirements of Rule 19b–4(e). The Exchange will file Form 19b–4(e) for each series of PDR or Index Fund Shares listed under Rule 19b–4(e) within five business days of commencement of trading.[14]

The provisions of Amex Rules 1000 *et seq.* or 1000A *et seq.* will apply to all series of PDR and Index Fund Shares listed under Rule 19b–4(e). In addition to the requirements of proposed Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02, PDR and Index Fund Shares will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDR and Index Fund Shares.

Amex Rule 154. Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may, with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary. 04(c)(i–v). PDR and Index Fund Shares listed under Rule 19b–4(e) will be eligible for this treatment.[15]

Trading Halts. In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in PDR and Index Fund Shares. These factors would include (1) the extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in these securities will also be halted in the event that market-wide ''circuit breaker'' parameters of Amex Rule 117 are triggered.

Amex Rule 190, Commentary .04. Amex Rule 190, Commentary .04 will apply to PDR and Index Fund Shares listed under Rule 19b–4(e). This Commentary provides that the prohibition in Amex Rule 190(a) against a specialist or the specialist's member organization effecting any business transactions with a company in which stock the specialist is registered does not restrict a specialist registered in a series of PDR or Index Fund Shares from purchasing and redeeming the applicable series from the issuer to facilitate the maintenance of a fair and orderly market.

Notice to Members. The Exchange will issue a Notice to Members for each

[13] Under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of such fund's total assets.

[14] 17 CFR 240.19b–4(e).

[15] *See* Securities Exchange Act Release No. 29063, note 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

series to be listed pursuant to Rule 19b–4(e). The notice will describe the characteristics of the securities and will inform members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of PDR or Index Fund Shares. In addition, the notice will inform members of their responsibilities under Amex Rule 411 (Duty to Know and Approve Customers) in connection with customer transactions in these securities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [16] in general and furthers the objectives of Section 6(b)(5) [17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number SR–AMEX–00–14 and should be submitted by April 18, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7534 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42553; File No. SR–CHX–99–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Relating to Amendments to the Exchange's Procedures for Market-at-the-Close Orders

March 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 1999, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Purposed Rule Change

The Exchange proposes to amend its procedures for the cancellation of Market-at-the-Close orders (''MOC orders'') under CHX Article XX, Rule 44. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 10, 1998, the Commission approved a rule change that established formal procedures governing the entry, executions and cancellation of MOC orders on the CHX.[3] Those procedures were designed to mirror procedures in use by the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''AMEX'') to ensure that MOC orders sent to the CHX receive treatment comparable to MOC orders sent to the NYSE or AMEX, and to prevent the entry, execution or cancellation of MOC orders on the CHX that would otherwise be prohibited on those primary markets.

As defined in CHX Article XX, Rule 44, an MOC order is a market order which is to be executed in its entirety at the closing price on the primary market of the stock named in the order, and if not so executed, is to be treated as cancelled. MOC orders may not be entered on the CHX after 2:40 p.m. (Central Time) unless the specialist determines that an order could have been entered on the primary market. This is done by monitoring published MOC order imbalances on the primary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40655 (November 10, 1998), 63 FR 64299 (November 19, 1998)(SR–CHX–97–19).

market. Current CHX MOC order procedures also prohibit Exchange members from canceling MOC orders after 2:40 p.m. (Central Time) except in the case of a legitimate error.

On June 9, 1999, the Commission approved an NYSE rule change amending NYSE's MOC (and limit-on-close) order entry and cancellation procedures during regulatory halts.[4] That change amended, among other things, the NYSE's MOC procedures to allow market participants to cancel MOC orders if a regulatory halt is in effect at 2:40 p.m. (Central Time) or later, until 2:50 p.m. (Central Time) or the reopening of the stock, whichever occurs first. The Commission, on September 14, 1999, approved a corresponding rule change submitted by the AMEX.[5]

On October 20, 1999, the Commission approved an additional NYSE rule change concerning MOC order cancellation procedures.[6] That change further amended the NYSE's MOC cancellation procedures to prohibit the cancellation or reduction in size of MOC orders after 2:50 p.m. (Central Time) for any reason.

Therefore, until recently, the NYSE only allowed cancellation of MOC orders after 2:40 p.m. (Central Time) to correct a legitimate error. However, under the revised NYSE procedures, if a regulatory halt has been instituted for a stock at or after 2:40 p.m., NYSE members will be permitted to cancel MOC orders between 2:40 p.m. and 2:50 p.m. (Central Time) or when the stock reopens, whichever occurs first. This allows market participants to react to news generated during a regulatory halt that could result in the stock reopening at a price substantially different from the last sale. Furthermore, the NYSE now prohibits cancellation or reduction in size of MOC Orders after 2:50 p.m. for any reason, including legitimate error.

The CHX proposal would amend the CHX policy to allow for cancellations if such cancellation would be allowed on the primary market (*i.e.,* if a regulatory halt has been instituted at or after 2:40 p.m. Central Time). The proposed rule change would also prohibit cancellation or reduction in size of MOC orders after 2:50 p.m. for any reason.

While CHX Article XX, Rule 44 by its nature can only apply to Dual Trading System Issues,[7] the proposed rule change also amends the title of Rule 44 to explicitly state that the rule only applies to MOC orders in Dual Trading System Issues.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–99–30 and should be submitted by April 18, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Exchange's proposed rule change and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act[10] because the proposal will promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market, by (1) allowing for cancellations of MOC orders if such cancellation would be allowed on the primary market; and (2) prohibiting cancellation or reduction in the size of MOC orders after 2:50 p.m. for any reason consistent with primary market requirements. The Commission also finds the proposal is consistent with Section 6(b)(5) of the Act[11] because it will allow the Exchange to handle MOC orders in conformity with procedures in place on other Exchanges.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that accelerated approval would afford investors the benefits to be realized under this proposal as soon as possible. Additionally, the Commission notes that the proposal is similar to proposals filed by other self-regulatory organizations that the Commission has approved.[12] These were noticed for the full 21 day comment period, and no comments were received. For these reasons, and because the proposal is unlikely to raise new issues, the Commission deems it appropriate to approve the proposed rule change on an accelerated basis. The Commission finds, therefore, that good cause exists, consistent with Section 19(b)[13] and Section 6(b)[14] of the Act, to grant accelerated approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CHX–99–30) is hereby approved on an accelerated basis.

[4] *See* Securities Exchange Act Release No. 41497 (June 9, 1999), 64 FR 32595 (June 17, 1999) SR–NYSE–98–42).

[5] *See* Securities Exchange Act Release No. 41877 (September 14, 1999), 64 FR 51566 (September 23, 1999) (SR–AMEX–99–32).

[6] *See* Securities Exchange Act Release No. 42040 (October 20, 1999), 64 FR 57681 (October 26, 1999) (SR–NYSE–99–26).

[7] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the NYSE or AMEX.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* footnotes 4 and 6, *supra.*

[13] 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7535 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42565; File No. SR–CHX–99–24]

Self-Regulatory Organizations; Order Granting Accelerated Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Price Improvement for Securities that Trade in Minimum Variations of 1/64th of $1.00

March 22, 2000.

I. Background

On October 20, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article XX, Rule 37, of the Exchange's rules relating to price improvement. The proposed rule change was published for comment in the **Federal Register** on February 28, 2000.[3] On March 21, 2000, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Article XX, Rule 37, of the Exchange's rules, governing price improvement, to add section 37(g) to provide for an algorithm for price improvement for issues trading in minimum variations of 1/64th of $1.00. The primary purpose of the proposed rule change is to afford specialists a viable means of offering customers price improvement for securities that trade in minimum variations of 1/64th.

Presently, three existing CHX programs within the MAX system, SuperMAX, Enhanced SuperMAX and SuperMAX Plus, use computerized algorithms to provide automated price improvement. These programs were created for securities that trade in minimum variations of 1/16th to provide for price improvement of 1/16th of a point when the spread is 1/8th or greater. Specialist participation in all three of these programs is voluntary. Each of these price improvement programs were approved by the Commission on a permanent basis.[5] Under this proposal, the CHX would add a fourth voluntary program, Derivative SuperMAX, within the MAX system to provide for price improvement for securities trading in minimum variation of 1/64th.[6] The addition of the proposed price improvement algorithm for Derivative SuperMAX should enhance the ability of CHX specialists to offer customers price improvement for all securities at the minimum increment, even those securities that trade in 1/64th increments.

Under Derivative Super MAX, which would be available only for those securities trading in minimum variation of 1/64th of $1.00, small agency market order (*i.e.* orders from 100 shares up to and including 500 shares (or such greater amount designated by the specialist and approved by the Exchange)) would be eligible for price improvement if the market for the security is quoted with a spread of 1/16th of a point or greater. The new algorithm would provide 1/64th of a point price improvement from the ITS BBO. Specialist participation in the Derivative SuperMAX would be on a security-by-security basis and would be limited to securities that trade in minimum variations of 1/64th of $1.00.

The addition of Derivative SuperMAX would become operative shortly after Commission approval of this proposed rule change, on a date to be determined by the Exchange.[7]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments conceding Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–24 and should be submitted by April 18, 2000.

IV. Commission findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediment sand to perfect the mechanism of a free and open market and a national market

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 789s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42442 (February 18, 2000), 65 FR 10575.

[4] *See* letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 21, 2000. (''Amendment No. 1''). In Amendment No. 1, the CHX confirmed its readiness and intention to activate the price improvement algorithm described in this proposal within one day following the Commission's approval of this proposed rule change. The CHX also indicated that it intended to implement the proposal as soon as practicable in order to remain competitive with other market centers that trade the securities that trade at the CHX in minimum increments of 1/64th. Finally, the CHX noted that approximately 88% of the trades in such securities are for 599 shares or less.

[5] *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998) and 40235 (July 17, 1998, 63 FR 40147 (July 27, 1998) (File No. SR–CHX–98–9) (orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999) (order approving revised SuperMAX Plus algorithm).

[6] Presently, only securities derivative equity products trade in a minimum increment of 1/64th on the Exchange. However, the Derivative SuperMAX algorithm is not limited to derivative products, thus non-derivative securities traded in 1/64th increments on the Exchange in the future would eligible for price improvement under this proposal. Telephone conversation between Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, and Marc McKayle, Attorney, Division, Commission on March 20, 2000.

[7] *See* Amendment No. 1, note 4, *above.*

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation.

[9] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Commission believes that the Derivative SuperMAX price improvement algorithm should provide investors a meaningful opportunity for price improvement when securities trading in 1/64th increments have a spread of 1/16th point or greater. The Commission believes that, because the opportunity for price improvement is automatic and without any specialist intervention, Derivative SuperMAX could facilitate order interaction and enhance customer orders consistent with section 6(b)(5) of the Act.[10] The Commission notes that while Derivative Super MAX is a voluntary program that specialists may choose to participate in for Dual Trading System issues,[11] providing a greater number of investors an opportunity to achieve price improvement is compatible with the views on best execution expressed in the Order Handling release.[12]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the proposal in the **Federal Register** because in Amendment No. 1 to the proposal the Exchange has asserted that is able to activate the price improvement algorithm within one day of Commission approval. Further the, Commission believes that the proposal's price improvement algorithm should enhance the CHX's ability to compete with other market centers that trade the same securities that trade at the Exchange in minimum increments of 1/64th, which in turn should benefit customers. Finally, the Commission notes that it expects the Exchange to submit proposed rule changes for all four MAX price improvement algorithms, pursuant to Section 19(b)(3)(A) of the Act,[13] to clarify the interpretation and operation of the pricing algorithms once securities are quoted and traded in decimals.

IV. CONCLUSION

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–CHX–24), as amended, be approved.

[10] 15 U.S.C. 78f(b)(5).

[11] Dual Trading issues are issues traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or the American Stock Exchange.

[12] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 00–7585 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42561; File No. SR–CHX–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Amending Its Membership Dues and Fees Schedule

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice hereby is given that on March 3, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[2] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (''Schedule'') in several ways. These changes increase the membership dues paid by all members; revise the fixed fees and credits for all securities; revise the application and assignment fee structure for all securities; and reflect charges relating to the processing of applications. The text of the proposed rule change is available upon request from the CHX or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Schedule in several ways. These changes are designed to allow the Exchange to continue its rapid growth while providing a strong market for its members and for investors.

First, the proposal increases the annual membership dues for all members by $1,800 (from $3,200 to $5,000 per year). These dues are paid in equal monthly installments throughout the year. The proposal would increase the payments beginning April 1, 2000.[3]

Second, the proposal revises the specialist fixed fees and credits for all securities by increasing the specialist fixed fees and credits for Dual Trading System Securities and by imposing a specialist fixed fee and a credit for Nasdaq/NM Securities. The specialist fixed fee is paid by the specialist in a particular security; the amount of the fee is based either on the trading volume in that security (for Dual Trading System Securities) or on a market share calculation in that security (for Nasdaq/NM Securities).[4] Specialist credits are designed to reduce the total monthly fees paid by each specialist and to reduce the costs of trading on the

[15] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] Because the increase takes effect during the year, a member will not pay the full $5,000 in 2000; instead, a member will pay approximately $4,550 (three months at $266.66/month plus nine months at $416.66/month equals $4,549.92).

[4] According to the proposed schedule, the fixed fee for Dual Trading System Securities would increase on April 1, 2000, and again on October 1, 2000; the new fixed fee for Nasdaq/NM Securities would begin on April 1, 2000. The Exchange has charged its members a fixed fee on Dual Trading System Securities for many years; this proposed revision to the Schedule represents the first time that the Exchange would charge a fixed fee on its nascent Nasdaq/NM Securities product line. These new Nasdaq/NM-related fixed fees allow the Exchange to defray, at least partially, the costs associated with the continued development and anticipated growth of this program. The Exchange believes it is appropriate, at least initially, to begin assessing this new Nasdaq/NM Securities fixed fee at a somewhat lower level than the fee that has been in place for Dual Trading System Securities for a number of years in order to allow members time to adjust their business models to this new requirement.

Exchange for members who make particular contributions to the Exchange's overall success.

The proposed also imposes a $150 fee on each application submitted by a member organization to act as the specialist in a security and revises the fee paid per assignment by the member organization ultimately chosen to fulfill the specialist role. These revised fees are smallest for assignments made when only one firm is seeking to act as the specialist on a particular security, and then increase in two tiers, depending on how many firms seek a common assignment. This revised fee structure reflects, in part, the increased work involved both in processing multiple specialist applications for the same security and in bringing those issues before the Exchange's Committee on Specialist Assignment and Evaluation. This structure also reflects the Exchange's belief that an assignment sought by more than one specialist firm is a more valuable assignment than one that is not the subject of competition.[5] These modified fees take effect on April 1, 2000.

Finally, the proposal defines the amounts of the fees for the fingerprinting and background checks required as part of the membership and floor employee application process, and also states the amount of the fee for replacing a floor access badge.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4)[6] in particular in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CHX, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–06 and should be submitted by April 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Maragret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7586 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–10–M

[5] Under the proposed arrangement, the Exchange will continue its practice of charging somewhat higher fees for the assignment of Nasdaq/NM Securities than for the assignment of Dual Trading System Securities. The Exchange believes this structure appropriately reflects the increasing amount of work related to the number of specialist applications the Exchange receives for the assignment of Nasdaq/NM Securities. The higher fee will also help to offset at least some of the development costs associated with the growing Nasdaq/NM Securities program by directly assessing the firms being assigned the opportunity to act as specialists in Nasdaq/NM Securities. More importantly, demand for Nasdaq/NM issues exceeds the supply available under the Exchange's current pilot program, which permits the Exchange to trade only 1,000 Nasdaq/NM Securities. The Exchange believes that the higher fee will, in part, moderate that demand. *See* Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999), (S7–24–89), increasing the permissible number of Nasdaq/NM Securities eligible for trading on the CHX on an unlisted or listed basis from 500 to 1,000.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42567; File No. SR–CHX–00–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Administration of the Exchange's Floor Membership Examination

March 22, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on March 6, 2000,[3] the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretation and Policy .01(a) to CHX Rule 3 to eliminate the requirement that applicants for Exchange membership requesting a floor presence be posted for membership before taking the Exchange's Floor Membership Examination. The proposal would permit administration of the Floor Membership Examination in a manner more convenient for both the applicant and the Exchange's staff. The text of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally submitted the proposed rule change on February 28, 2000 pursuant to section 19(b)(2) of the Act. After consulting with Commission staff, the Exchange submitted Amendment No. 1 to refile the proposed rule change as a non-controversial filing pursuant to Rule 19b–4(f)(6) under the Act. Letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 3, 2000 (''Amendment No. 1'').

proposed rule change is set forth below. Deletions are in brackets.

ARTICLE VI

RESTRICTIONS AND REQUIREMENTS

Training and Examination of Registrants

Rule 3.

* * * * *

Interpretations and Policies

.01 Floor Member Organizations

(a) Floor Membership Exam

All applicants for membership on the Exchange requesting a floor presence must successfully complete the Floor Membership Exam [after the applicant has been posted for membership].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will permit administration of the Floor Membership Examination either before or after posting of an applicant requesting a floor presence on the Exchange. The Exchange believes that the flexibility afforded by the proposed rule change will permit more efficient scheduling and administration of the examination process to the benefit of prospective members, member organizations, and Exchange staff, by removing the unnecessary formality of requiring posting as a prerequisite to taking the exam. The Exchange will still require applicants of prospective members to be posted prior to approval for membership, which will maintain the protections of the membership consideration progress.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from March 6, 2000, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act and rule 19b–4(f)(6) thereunder.[5] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to the File No. SR–CHX–00–01 and should be submitted by April 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7587 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78(b)(5).

[5] 17 CFR 250.19b–4(f)(6).

[6] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42562; File No. SR–Phlx–00–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Monthly Examination Fee

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On March 13, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected the Schedule of Dues and Fees contained in Appendix A to reflect the current status of recently proposed fees. *See* letter from Murray L. Ross, Secretary, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation (''Division''), SEC, dated March 10, 2000 (''Amendment No. 1'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to increase the monthly examinations fee from $1,000 per month to $2,000 per month. The proposed increase in the Examinations Fee is to be effective as of March 1, 2000. The text of the proposed change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase from $1,000 per month to $2,000 per month the Examinations Fee paid by member organizations for which the Exchange is the Designated Examining Authority (''DEA'') and which do not meet any of the exemptions to the examinations fee. Those exemptions remain unchanged.[4] Since the implementation of this fee in 1995, the number of member organizations for which the Exchange is the DEA, and which are subject to the Examinations Fee, has more than doubled.

The Exchange has experienced increased administrative costs incurred while conducting examinations of member organizations, not only due to increased travel and lodging costs for its examiners, but also because of an increase in the amount of staff time committed to undertake such examinations. The Exchange notes that a number of member organizations subject to the Examinations Fee operate as foreign-based registered broker-dealers.

Additionally, the Exchange has had to increase the amount of staff time devoted to the service function it performs for firms. This service function consists of initially advising firms on how to set up financial reporting records, comply with Exchange and Commission rules, and comply with supervisory procedures and controls required by the Exchange and the Commission. Moreover, the Exchange has undertaken increased administrative and regulatory responsibilities associated with member organizations and their off floor traders, including scheduling more frequent compliance inspections as part of the Examinations Department's audit plan.[5]

In order to compensate for the extensive staff time, examination and regulatory administrative cost associated with examining off-floor firms that are not active participants in Phlx markets, the Exchange proposes to amend its fee schedule by increasing the Examinations Fee to $2,000 per month.[6] The firms subject to the Examinations Fee are all located off the Exchange's trading floors.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[7] of the Act in general and furthers the objectives of Section 6(b)(4)[8] in particular because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate or unnecessary burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or charge imposed by the exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f)(2) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[11] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–18 and should be submitted by April 18, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[4] The Examinations Fee was approved by the Commission on December 12, 1994 and made effective January 1, 1995. *See* Exchange Act Release No. 35091 (Dec. 12, 1994), 59 FR 65558 (Dec. 20, 1994).

[5] The Exchange notes that the enumerated exemptions from the Examinations Fee remain unchanged. *See* note 2 to Appendix A. Moreover, the proposed change will not affect the current procedures pursuant to which the actual cost of an examination is passed through to members in the event a self-regulatory organization other than the Phlx conducts the examination. *See* Exchange Act Release No. 39744 (March 11, 1998), 63 FR 13294 (March 18, 1998).

[6] *See* Appendix A attached hereto.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 USC 78c(f).

[12] 17 CFR 200.30–3(a)(12).

APPENDIX A

New Text *Underlined;* Deleted Text Bracketed:	
Membership dues or Foreign Currency User Fees [1]	$166.67 monthly.
Foreign Currency Option Participation Fee	$166.67 monthly.
Application Fee	$200.00.
Initiation Fee	$1,500.00.
Transfer Fee	$500.00.
Trading Post/Booth	$250.00 monthly.
Controller Space	$750.00 quarterly.
Floor Facility Fees	$375.00 quarterly.
Shelf Space on Equity Option Trading Floor	$375.00 quarterly.
Direct Wire to the Floor	$60.00 quarterly.
Telephone System Line Extensions	$22.50 monthly/per extension.
Wireless Telephone System	$200.00 monthly.
Execution Services/Communication Charge	$200.00 monthly.
Stock Execution Machine Registration Fee (Equity Floor)	$300.00.
Equity, Option, or FCO Transmission Charge	$750.00 monthly.
FCO Pricing Tape	$600.00 monthly.
Option Report Service:	
(New York)	$600.00 monthly.
(Chicago)	$800.00 monthly.
Quotron Equipment	$225.00 monthly.
Instinet, Reuters Equipment	cost passed through.
Examinations Fee	$*[1]2*,000.00 monthly [2] or pass-through of another SRO's fees.
Technology Fee [3]	$100.00 monthly.
Review/Process Subordinated Loans	$25.00.
Registered Representative Registration:	
Initial	$25.00
Maintenance	$25.00 annually.
Transfer	$25.00.
Option Mailgram Service	$117.00 monthly.
Off-Floor Trader Initial Registration Fee	$200.00.
Off-Floor Trader Annual Fee	$200.00.
Computer Equipment Services, Repairs or Replacements [4]	$100.00 per service call and $75.00 per hour (Two hour minimum).
Computer Relocation Requests [5]	$75.00 per person, per hour (Two hour minimum).

[1] An exemption from foreign currency user fees is extended to PHLX members also holding title to a foreign currency options participation.

[2] This fee is applicable to member/participant organizations for which the PHLX is the DEA. The following organizations are exempt: (1) inactive organizations; (2) organizations operating from the PHLX trading floor which have demonstrated that at least 25% of their income as reflected on the most recently submitted FOCUS Report was derived from floor activities; (3) organizations for any month where they incur transaction or clearing fees charged directly by the Exchange or by its registered clearing subsidiary, provided that the fees exceed the examinatiions fee for that month; and (4) organizations affiliated with an organization exempt from this fee due to the second or third category. Affiliation includes an organization that is a wholly owned subsidiary of or controlled by or under the common control with an exempt member or participant organization. An inactive organization is one that had no securities transaction revenue, as determined by semi-annual FOCUS reports, as long as the organization continues to have no such revenue each month.

[3] An exemption from the technology fee is extended to foreign currency options participants who are also affiliated with the Exchange as Phlx members.

[4] These fees will be effective from January 1, 2000 until March 31, 2000, unless extended consistent with the requirements of Section 19(b) of the Securities Exchange Act of 1934. At this time, these fees will not be applied to participants on the Foreign Currency Options Trading Floor.

[5] These fees will be effective from January 1, 2000 until March 31, 2000, unless extended consistent with the requirements of Section 19(b) of the Securities Exchange Act of 1934. At this time, these fees will not be applied to participants on the Foreign Currency Options Trading Floor.

[FR Doc. 00–7588 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/State Department(s) for Health and Income Maintenance) for Disclosure of Medicaid Information (Match #1085)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 597–0841, or writing to the Associate Commissioner for Program Support, 4400 West High Rise, 6401 Security Boulevard, Baltimore, MD 21235.

All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 [Public Law (Pub. L.)100–503], amended the Privacy

Act (5 U.S.C. 552a) by describing the manner in which computer matching involving records of Federal and State agencies could be performed and adding certain protections for individuals applying for and receiving State administered Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L.101–508), further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies ' participating in the matching programs;

(2) Obtain the approval of the match agreements by the Data Integrity Boards of the participating Federal Agency;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: March 20, 2000.

Susan M. Daniels,

Deputy Commissioner for Disability, and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with State Health and Income Maintenance Agencies

A. Participating Agencies

SSA and State Health/Income Maintenance Agencies

B. Purpose of the Matching Program

To identify eligible Supplemental Security Income (SSI) Medicaid enrollees whose records have been inactive for a set period of at least nine consecutive months. Records of individual recipients who meet the aforementioned criteria will be disclosed for SSA to review the accuracy of SSI eligibility factors. This disclosure will ensure that SSA has accurate information upon which to base decisions for the SSI program.

C. Authority for Conducting the Matching Programs

Section 1611(f) (41 U.S.C. 1382), 1616 (42 U.S.C. 1382e), 1631(e) (42 U.S.C. 1383), and section 1137 (42 U.S.C. 1320b–7) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Matching Program

SSA systems of records used for the purposes of this agreement will be the Supplemental Security Income Record (SSR) (SSA/OSR 09–60–0103), and the State Data Exchange system (SDX). The SDX derives data from the SSR. The State health/income maintenance agency will identify eligible SSI Medicaid enrollees whose records have been inactive for at least one year. Selected records will be disclosed to SSA to review for accuracy of eligibility factors. The disclosure will ensure that SSA has accurate information on which to base its entitlement decisions for the SSI program.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after notice of this matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 00–7602 Filed 3–27–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3263]

Advisory Committee on International Communications and Information Policy Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

There will be a featured guest speaker at the meeting who will speak on an important topic involving international communications and information policy.

This meeting will be held on Thursday, April 27, 2000, from 9:30 a.m.—12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW., Washington, DC. 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: March 2, 2000.

Timothy C. Finton,

Executive Secretary of the Advisory Committee on International Communications and Information Policy, U.S. Department of State.

[FR Doc. 00–7613 Filed 3–27–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 3234]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation Notice of Meeting

There will be two meetings hosted by the Shipping Coordinating Committee. They are as follows:

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Wednesday, April 12, 2000, in room 6103, U. S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to prepare for the 46th session of the Subcommittee on Safety of Navigation

(NAV) of the International Maritime Organization (IMO) which is scheduled for July 10—14, 2000, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting and related matters;
—Amendments to the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS);
—Integrated bridge systems (IBS) operational aspects;
—Guidelines on ergonomic criteria for bridge equipment and layout;
—Navigational aids and related matters;
—International Telecommunication Union (ITU) matters, including Radiocommunication ITU-R Study Group 8;
—IMO Standard Marine Communication Phrases;
—Guidelines relating to SOLAS chapter V;
—Comprehensive review of chapter 13 of the High Speed Craft (HSC) Code;
—Development of guidelines for ships operating in ice-covered waters.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G-MWV–3), Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 am., on Tuesday, April 18, 2000, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to report the results of Eighty-first Session of the International Maritime Organization Legal Committee (LEG 81) being held from March 27–31, 2000, in London.

During LEG 81, the Legal Committee will complete the preparation of the draft bunkers convention for a diplomatic conference, which will be held in the 2000–2001 biennium. The Legal Committee will then continue work on a draft protocol to the Athens Convention and on the draft Wreck Removal Convention. The committee will next turn its' attention to the implementation of the HNS Convention, and time will also be allotted to address any other issues on the Legal Committee's work program on which there are questions or comments.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views in advance of meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant Daniel J. Goettle, U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street SW, Washington, DC 20593–0001; telephone (202) 267–1527; fax (202) 267–4496.

Dated: March 20, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee U.S. Department of State 3.

[FR Doc. 00–7612 Filed 3–27–00; 8:45 am]

BILLING CODE 4710–07–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Rectification to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative

ACTION: Notice of rectification to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative (the USTR) is providing notice of certain technical rectifications to subheadings in chapter 2 of the Harmonized Tariff Schedule of the United States (HTS) pursuant to authority granted by Congress to the President in section 604 of the Trade Act of 1974 and delegated to the USTR in Presidential Proclamation No. 6969 of January 27, 1997 (62 FR 4415). These rectifications will correct omissions that occurred when the HTS was modified to reflect the Uruguay Round conversion of the U.S. quota on beef to a tariff-rate quota and will ensure that the United States continues to meet its obligations under the Canada-U.S. Free Trade Agreement and the North American Free Trade Agreement with respect to goods of Canada, under the terms of general note 12 to the HTS, that are classified in HTS subheadings relating to meat from bovine animals.

DATES: The effective date of the rectifications is January 1, 1995, for all goods entered, or withdrawn from warehouse for consumption, under the specified HTS subheadings, for which the liquidation of duties has not become final under 9 U.S.C. 1514.

FOR FURTHER INFORMATION CONTACT: Mark Sloan, Office of Agricultural Affairs, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395–6127.

SUPPLEMENTARY INFORMATION: As part of the Canada-U.S. Free Trade Agreement and the North American Free Trade Agreement, the United States agreed to provide Canada duty-free treatment for meat of bovine animals classified in chapter 2 of the HTS under tariff headings 0201 and 0202 and constituting goods of Canada, under the terms of general note 12 to the HTS. Duty-free treatment for meat from bovine animals comprising goods of Canada commenced on January 1, 1994. However, when the HTS was modified in 1995 to reflect the creation of a U.S. tariff-rate quota consistent for beef with the World Trade Organization Agreement on Agriculture, the tariff subheadings related to imports of meat from bovine animals not included in the United States tariff-rate quota, which is set forth in additional U.S. note 3 to chapter 2 of the HTS, were inadvertently not modified to provide Canada a special rate of duty of ''free'' for six tariff subheadings in the HTS: 0201.10.50; 0201.20.80; 0201.30.80; 0202.10.50; 0202.20.80; and 0202.30.80. This notice rectifies that omission in the HTS and reflects the duty-free treatment that should be accorded to meat of bovine animals, the foregoing being goods of Canada under the terms of general note 12 to the HTS, not covered by the tariff-rate quota set forth in additional U.S. note 3 to chapter 2 of the HTS. Duty-free treatment for beef from bovine animals that comprises goods of Canada is already provided for in the HTS.

Proclamation 6969 of January 27, 1997 (62 FR 4415, January 29, 1997) authorized the United States Trade Representative (USTR) to exercise the authority provided to the President under section 604 of the Trade Act of 1974, as amended by Public Law 100–418, 88 Stat. 2073 (19 U.S.C. 2483), to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969 and the authority vested in the President by the Constitution and the laws of the United States, including, but not limited to, section 604 of the Trade Act of 1974, the United States-Canada Free-Trade Agreement Implementation Act of 1988, P.L. 100–449 (19 U.S.C. 2112 note), and the North American Free-Trade Agreement Implementation Act, P.L. 103–182 (19 U.S.C. 3301 *et seq.*), the following subheadings of chapter 2 of the Harmonized Tariff Schedule of the United States are modified by inserting, in the Rates of Duty1-Special subcolumn in the parentheses following the ''Free'' rate of duty the symbol ''CA'' in alphabetical order: 0201.10.50;

0201.20.80; 0201.30.80; 0202.10.50; 0202.20.80; and 0202.30.80. This modification to the identified HTS subheadings shall be effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 1995, for which the liquidation of duties has not become final under 19 U.S.C. 1514.

The tariff rectification and duty treatment provided herein shall be applicable to the aforementioned entries of goods under the specified HTS subheadings provided that the importer supplies any information that may be requested by the United States Customs Service to permit identification of each such entry (including, but not limited to, the entry number for the shipment concerned).

Robert T. Novick,

Acting United States Trade Representative.

[FR Doc. 00–7616 Filed 3–27–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on April 10, 2000, from 9:30 a.m. to 2:45 p.m. The meeting will be open to the public from 9:30 a.m. to 10:30 a.m. and again from 11:00 a.m. to 2:45 p.m. and closed to the public from 10:30 a.m. to 11:00 a.m.

DATES: The meeting is scheduled for April 10, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Cory Churches, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–4792 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a meeting on April 10, 2000, from 9:30 a.m. to 2:45 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of a trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 10:30 a.m. to 11:00 a.m. The meeting will be open to the public and press from 9:30 a.m. to 10:30 a.m. and again from 11:00 a.m. to 2:45 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–7617 Filed 3–27–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments for Mandated Multilateral Trade Negotiations on Agriculture and Services in the World Trade Organization (WTO) and Priorities for Future Market Access Negotiations on Non-Agricultural Goods

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Comments (TPSC) is requesting written public comments on general U.S. negotiating objectives as well as country and item-specific export priorities for agriculture and services. The TPSC also seeks public comment on country-specific export priorities for tariffs and non-tariff measures for non-agricultural products. Comments received will be considered by the Executive Branch in formulating U.S. positions and objectives for U.S. participation in the mandated WTO negotiations on agriculture and services and further negotiations on market for non-agricultural products should consensus emerge among WTO Members to launch negotiations in this area.

DATES: Public comments are due by noon, May 12, 2000.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Neff, Office of Agricultural Affairs (202) 395–6127 for agriculture; Peter Collins, Office of Services, Investment and Intellectual Property (202) 395–7271 for services; Barbara Chattin, Office of WTO and Multilateral Affairs at (202) 395–5097 for non-agricultural market access; and Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representatives, (202) 395–3475 for procedural questions concerning public comments.

Information about the WTO can be obtained via the WTO website (*www.wto.org*). U.S. submissions on agriculture, services and non-agricultural market access made to the WTO General Council as part of the preparatory process for the WTO Ministerial in December 1999 can be found on the USTR website (*www.ustr.gov*) under ''what's new.''

SUPPLEMENTARY INFORMATION: The TPSC invites written comments from the public on issues to be addressed in the course of the mandated negotiations on agriculture and services that are underway in the WTO. The Uruguay Round Agreement on Agriculture stipulates in Article 20 that a continuation of the reform process begin ''one year before the end of the implementation period,'' *i.e.,* beginning of 2000. Similarly, the General Agreement on Trade in Services (GATS) provides, in Article XIX, ''Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement * * *.'' Although not part of the WTO mandated negotiations, the Administration notes that it has received expressions of interest in further negotiations on non-agricultural market access, including tariffs and non-tariff measures for specific products and countries.

For agriculture, topics for negotiating objectives include reforms in each of the areas of market access, domestic support, export competition, and other rules and disciplines affecting trade in agricultural products, including biotechnology. Comments are welcome with as much specificity as the respondent can provide an general or commodity-specific negotiating objectives; country and product specific export interests or barriers; and

experience with particular measures, such as tariff-rate quota administration, that might be addressed in the context of the new negotiations.

For services, topics for negotiating objectives include removal or reduction of barriers to U.S. services exports under existing GATS disciplines; establishment of new GATS disciplines to ensure effective market access, *e.g.,* proposed disciplines on domestic regulations on services, possibly addressing transparency and necessity; and clarification of sectoral definitions in the Agreement.

Services sectors under consideration in the negotiations include: (1) Business services, including professional and related services (including legal, accounting, auditing and bookkeeping, taxation, medical, dental, veterinary, engineering, architectural, and urban planning services), computer and related services, research and development services, real estate services, rental and leasing services, and advertising and management services; (2) communication services (including telecommunications services, audiovisual services, postal services, and express delivery or ''courier'' services); (3) construction and related engineering services; (4) distribution services (including wholesale, retail, and franchising services); (5) educational and training services; (6) environmental services; (7) energy services; (8) financial services, including insurance and insurance-related services, banking and securities services; (9) health-related and social services; (10) tourism and travel-related services; (11) recreational, cultural and sporting services; and (12) transport services.

Comments on broader negotiations on non-agricultural market access are welcome with as much specificity as the respondent can provide on general negotiating objectives and/or targets; country and product specific export interests or barriers; and experience with particular measures that might be improved in the context of the new negotiations.

The U.S. International Trade Commission has provided to the TPSC the public comments received on agricultural and non-agricultural products as part of its investigation No. 332–405, Probable Economic Effects on Reduction or Elimination of U.S. Tariffs (November 1999 (Confidential report)). Hence, these comments need not be resubmitted.

Comments should state clearly the objective(s) and should contain detailed information supporting the objective(s). Submissions should clearly indicate the general topic (*i.e.,* agriculture, services or non-agricultural products). For agriculture and non-agricultural products, identification of country-specific export priorities on goods should, to the maximum extent possible, identify the item by Harmonized System nomenclature at the 6-digit level at a minimum and the country of interest. For services, the submissions should include, wherever appropriate, sector-specific export priorities by country.

Persons submitting written comments should provide twenty (20) copies no later than noon May 12, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 122, 600 17th Street Northwest, Washington, DC 20508. In addition, a helpful supplement to the written statement would be to provide a disk of the submission containing as much of the technical details as possible, either in a spreadsheet format or in a word processing table format, with each tariff line/services sector in a separate cell. The disk should have a label identifying the software used and the submitter.

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at 202–395–6186. The Reading Room is open to the public from 10:00 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 00–7516 Filed 3–27–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–13

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspects of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 18, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa

Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 23, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 25052.
Petitioner: Promech, Inc.
Section of the FAR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/ Disposition: To permit Promech and six similarly situated certificate holders conducting operations under part 135 to operate seaplanes inside the Ketchikan, Alaska, Class E airspace under Special Visual Flight Rules below 500 feet above the surface.
Grant, 02/28/2000, Exemption No. 4760H.

Docket No.: 25390.
Petitioner: Airbus Industrie.
Section of the FAR Affected: 14 CFR 145.35.
Description of Relief Sought/ Disposition: To permit the production units of the members and associated partners of the Airbus consortium to be certificated collectively under Airbus as a U.S. foreign repair station to support the operation of U.S.-registered A300, A310, A319, A320, A321, A330, and A340 series airplanes.
Grant, 02/28/2000, Exemption No. 6029B.

Docket No.: 29052.
Petitioner: Business Airfreight.
Section of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought/ Disposition: To permit appropriately trained and certificated pilots employed by BAF to replace navigation lightbulbs, landing lightbulbs, taxi lightbulbs, missing or broken static wicks, and missing or broken bonding straps on BAF's aircraft used in operations conducted under 14 CFR part 135.
Denial, 02/29/2000, Exemption No. 7131.

Docket No.: 29116.
Petitioner: Taconite Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit TAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.
Grant, 02/09/2000, Exemption No. 6735A.

Docket No.: 29288.
Petitioner: Mr. Patrick J. Halloran.
Section of the FAR Affected: 14 CFR 65.104(a)(2).
Description of Relief Sought/ Disposition: To permit Mr. Halloran to satisfy the eligibility requirement for a repairman certificate (experimental aircraft builder) without being the primary builder of the aircraft to which the certificate privileges would apply.
Denial, 02/24/2000, Exemption No. 7127.

Docket No.: 29410.
Petitioner: U.S. Technical.
Section of the FAR Affected: 14 CFR 145.37(b).
Description of Relief Sought/ Disposition: To permit U.S. Technical to install, modify, and retrofit passenger and cabin amenities at customer facilities without providing suitable permanent housing for at least one of the heaviest aircraft for which it is rated.
Denial, 02/24/2000, Exemption No. 7130.

Docket No.: 29695.
Petitioner: Raytheon Systems Company.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Raytheon to make its Inspection Procedures Manual (IPM) available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.
Grant, 02/03/2000, Exemption No. 7115.

Docket No.: 29799.
Petitioner: Bombardier Aerospace.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Bombardier to place an adequate number of repair station IPMs in inspection areas and to assign IPMs to key individuals.
Grant, 02/03/2000, Exemption No. 7114.

Docket No.: 29822.
Petitioner: Mr. John A. Chunis.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mr. Chunis to conduct one local sightseeing flight for compensation or hire, auctioned off to raise funds for the United Way, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 02/04/2000, Exemption No. 7117.

Docket No.: 29845.
Petitioner: Mr. Ronald Drachenberg.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mr. Drachenberg to conduct one local sightseeing flight for a fundraising event for the Plainville Congregational Church, Plainville, Connecticut, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 02/25/200, Exemption No. 7128.

Docket No.: 29868.
Petitioner: Dee Howard Aircraft Maintenance, L.P.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit DHM to assign its IPM to specific management personnel rather than give a copy of its IPM to each of its supervisory and inspection personnel.
Grant, 02/24/2000, Exemption No. 7123.

Docket No.: 29929.
Petitioner: Quest Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit QAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 02/16/2000, Exemption No. 7125.

Docket No.: 29931.
Petitioner: Rotary Club of Kern River Valley.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit the Rotary Club of KRV to conduct local sightseeing flights at Kern Valley Airport on February 18, 19, and 20, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 02/18/2000, Exemption No. 7121.

Docket No.: 29932.
Petitioner: Mr. Maurice H. Witten.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mr. Witten to conduct local sightseeing flights in the vicinity of Hays, Kansas, for the Hays Jaycee fund raising event, for compensation or hire, without complying with certain anti-drug and

alcohol misuse prevention requirements of part 135.

Grant, 02/22/2000, Exemption No. 7122.

[FR Doc. 00–7635 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–14]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 18, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM__cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 23, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 27787.

Petitioner: Ameriflight, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Ameriflight to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 03/03/2000, Exemption No. 6830A.

Docket No.: 28529.

Petitioner: Atlantic Aero, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Atlantic Aero to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 03/03/2000, Exemption No. 6459c.

Docket No.: 29143.

Petitioner: Honeywell, Inc.

Section of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit Honeywell to substitute the instrument calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial, Brazil's national standards laboratory, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment.

Grant, 03/03/2000, Exemption No. 7137.

Docket No.: 29209.

Petitioner: AirNet Systems, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit ASI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 03/03/2000, Exemption No. 6772A.

Docket No.: 29218.

Petitioner: Cessna Aircraft Company.

Section of the FAR Affected: 14 CFR 91.409(b).

Description of Relief Sought/ Disposition: To permit owners and operators of Cessna C–172R, C–172S, and C–182S to use Cesna's PhaseCard Inspection Program rather under completing the 100-hour inspection required by 14 CFR § 91.409(b).

Grant, 03/03/2000, Exemption No. 6091A.

Docket No.: 29723.

Petitioner: Westjet Air Center, Inc.

Section of the FAR Affected: 14 CFR 61.3(a) and (c).

Description of Relief Sought/ Disposition: To permit Westjet to issue to its pilot flight crewmembers written confirmation of an individual FAA-issued crewmember certificates based on information in Westjet's approved record system. That confirmation, when attached to this exemption, permits (1) Westjet to operate the affected flight and (2) the individual pilot to serve as a flight crewmember for any part 135 flight operation without having in his/her possession an FAA-issued pilot or medical certificate.

Grant, 03/06/2000, Exemption No. 7136.

Docket No.: 29813.

Petitioner: Mr. Jeffrey D. Harband..

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Mr. Harband to conduct local sightseeing flights for charitable organizations, for compensation or hire, without complying with certain organizations, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 03/08/2000, Exemption No. 7139.

Docket No.: 29887.

Petitioner: Atlantic Southeast Airlines, Inc.

Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit ASA to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 03/07/2000, Exemption No. 7135.

Docket No.: 29902.

Petitioner: Brim Equipment Leasing, Inc., d.b.a. Brim Aviation.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Brim Aviation to operate its Robinson R22 Beta II aircraft

under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 03/08/2000, Exemption No. 7141.

Docket No.: 29926.

Petitioner: Ottumwa Flying Services, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit OFS to operate its King Air aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 03/08/2000, Exemption No. 7140.

[FR Doc. 00–7636 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13+M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7090]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JUST DESSERT.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub.L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 27, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7090.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub.L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: name: ''JUST DESSERT'', owner: Michael J. & Dawn G. Baldacchino.

(2) Size, capacity and tonnage of vessel: Hull length 44.2″, beam: 13.6′, depth: 6.5′, tonnages: Gross—20, Net—18, measured pursuant to 46 U.S.C. 14502.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''We are retired live-aboards, using our sailboat as our home. Our intention is to travel along the coastal United States (all coasts) and overseas (circumnavigate). We will be picking up crew, visitors, and friends for periods of time and legs of our journey who will pay for the segment that they are aboard to supplement our retirement income.''

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1990 Place of original construction: Cedex, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''We believe that there will be no impact on any local or existing commercial passenger vessel operators as our commercial impact will be transient and sporadic in nature.''

(6) A statement on the impact this waiver will have on U.S. shipyards. In addition to the statement above, also according to the applicant: ''We believe that this waiver will have no or insignificant impact on U.S. shipyards.''

By order of the Maritime Administrator.

Dated: March 23, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–7606 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7091]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ULTRA GRAND SLAM.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 27, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7091.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401,

Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub.L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: ULTRA GRAND SLAM, USCG Documentation No. 1066376 owner: according to the applicant ''the owner of the vessel ULTRA GRAND SLAM is C & J Enterprises Co. inc. d/b/a Charter Boat Grand Slam, an entity of the United States. The corporate officer is Craig Jiovani''. (2) Size, capacity and tonnage of vessel: Hull length 46′9″, beam: 15′9″, depth: 9′8″, tonnages: Gross—49.82, Net—19.93, measured pursuant to 46 U.S.C. 14502.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''The vessel ULTRA GRAND SLAM will be used to carry six or less passengers for hire, solely within the coastal waters of the State of Florida, and also outside the limits of the United States.''

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1971 Place of original construction: construction was believed to have taken place in Baltimore, MD, USA. However, due to the absence of sufficient builder certification necessary to meet U.S. documentation standards to qualify for a coastwise endorsement, for the purposes of waivers permitted under Pub.L. 105–383 the vessel is considered to not have been built in the United States.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''I, Craig Jiovani, as the President of C & J Enterprises Co. Inc. d/b/a/ Charter Boat Grand Slam, sole owner of the subject vessel, hereby attest to the fact that the much coveted Small Vessel Waiver will not unduly adversely affect either U.S. flagged vessel operators or U.S. shipbuilders.''

(6) A statement on the impact this waiver will have on U.S. shipyards. In addition to the statement above, also according to the applicant: ''Having been constructed entirely in Baltimore, Maryland in 1971, a Small Vessel Waiver will have no impact whatsoever on U.S. shipyards. All major components used on the vessel are U.S. Constructed.''

By Order of the Maritime Administrator.

Dated: March 23, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–7607 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33859]

Indiana Southwestern Railway Co.—Acquisition and Operation Exemption—Evansville Terminal Company, Inc. and AB Rail Investments, Inc.

Indiana Southwestern Railway Co. (ISW), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to purchase and operate two connecting lines of railroad in Vanderburgh and Posey Counties, IN, as follows: (1) Approximately 17.2 route miles from Evansville to Poseyville, owned by the Evansville Terminal Company (ETC); and (2) approximately 4.667 route miles from Poseyville to Cynthiana, owned by AB Rail Investments, Inc.[1]

The parties reported that they intended to consummate the transaction on or about March 15, 2000. The earliest the transaction could have been consummated was March 15, 2000, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 33858, *Pioneer Railcorp—Continuance in Control Exemption—Indiana Southwestern Railway Co.,* wherein Pioneer Railcorp has concurrently filed a verified notice to continue in control of ISW upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33859, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: March 21, 2000.

By the Board, David M. Konschanik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7591 Filed 3–27–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33858]

Pioneer Railcorp—Continuance in Control Exemption—Indiana Southwestern Railway Co.

Pioneer Railcorp (Pioneer), a noncarrier holding company, has filed a notice of exemption to continue in control of Indiana Southwestern Railway Co. (ISW), upon ISW's becoming a carrier.

The transaction was scheduled to be consummated on March 15, 2000.

This transaction is related to STB Finance Docket No. 33859, *Indiana*

[1] ETC currently operates both lines of railroad.

Southwestern Railway Co.—Acquisition and Operation Exemption—Evansville Terminal Company, Inc. and AB Rail Investments, Inc., wherein ISW seeks to acquire and operate two connecting lines of railroad currently owned by Evansville Terminal Company Inc. and AB Rail Investments, Inc.

At the time it filed the notice, Pioneer owned and controlled thirteen existing Class III shortline rail carriers: West Michigan Railroad Co., operating in Michigan; Fort Smith Railroad Co., operating in Arkansas; Alabama Railroad Co., operating in Alabama; Mississippi Central Railroad Co., operating in Mississippi and Tennessee; Alabama & Florida Railway Co., Inc., operating in Alabama; Decatur Junction Railway Co., operating in Illinois; Vandalia Railroad Company, operating in Illinois; Keokuk Junction Railway Co., operating in Iowa and Illinois; Michigan Southern Railroad Company, operating in Michigan and Indiana; Shawnee Terminal Railway Company, operating in Illinois; Pioneer Industrial Railway Co., operating in Illinois; Michigan Southern Railroad Co., Inc., operating in Michigan and Indiana; and Garden City Western Railway, Inc., operating in Kansas.

Pioneer states that: (i) The railroads will not connect with each other or any railroad in their corporate family; (ii) The continuance-in-control is not part of a series of anticipated transactions that would connect the fourteen railroads with each other or any railroad in their corporate family; and (iii) The transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33858, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: March 21, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7590 Filed 3–27–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 10, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 27, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1503.

Revenue Procedure Number: Revenue Procedure 96–53.

Type of Review: Extension.

Title: Section 482—Allocations Between Related Parties.

Description: The information requested in sections 4.02, 5, 8.02, 9, 11.01, 11.02(1), 11.04, 11.07, and 11.08 is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 160.

Estimated Burden Hours Per Respondent/Recordkeeper: 32 hours, 49 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 5,250 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget Room 10202, New Executive Office Building Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 00–7615 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 4461, 4461–A, and 4461–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461–A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461–B, Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor.

DATES: Written comments should be received on or before May 30, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461–

A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461–B, Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor.

OMB Number: 1545–0169.

Form Numbers: Forms 4461, 4461–A, and 4461–B.

Abstract: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 5,250.

Estimated Time Per Respondent: 20 hours, 50 minutes.

Estimated Total Annual Burden Hours: 109,388.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2000

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–7524 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 911

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 911, Application for Taxpayer Assistance Order (ATAO).

DATES: Written comments should be received on or before May 30, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Taxpayer Assistance Order (ATAO).

OMB Number: 1545–1504.

Form Number: 911.

Abstract: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails or take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the district where the taxpayer lives.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and state, local or tribal governments.

Estimated Number of Respondents: 93,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 46,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2000

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–7525 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

DATES: Submit written comments on or before May 30, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0025. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to ''public.info@ots.treas.gov'', and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

OMB Number: 1550–0025.

Form Number: OTS Forms 1594, 1585, 1589.

Abstract: Information provided to OTS is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transactions complies with applicable laws, regulations and policy, and will not have an adverse effect on the risk exposure to the insurance fund.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 122.

Estimated Time Per Respondent: 1.1 hours.

Estimated Total Annual Burden Hours: 134 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 22, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–7603 Filed 3–27–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Tuesday,
March 28, 2000

Part II

Federal Reserve System

Department of the Treasury

12 CFR Parts 225 and 1500

Bank Holding Companies and Change in Bank Control; Interim Rule and Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1065]

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

12 CFR Part 1500

RIN 1505–AA78

Bank Holding Companies and Change in Bank Control

AGENCIES: Board of Governors of the Federal Reserve System and Department of the Treasury.

ACTION: Interim rule, with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System and the Secretary of the Treasury jointly adopt on an interim basis, effective March 17, 2000, and solicit comment on a rule that will govern merchant banking investments made by financial holding companies. This rule implements provisions of the recently enacted Gramm-Leach-Bliley Act (GLB Act) that permit financial holding companies to make investments as part of a bona fide securities underwriting or merchant or investment banking activity. A summary of the rule appears below in the executive summary in the **SUPPLEMENTARY INFORMATION** section.

DATES: The interim rule is effective on March 17, 2000. Comments must be received on both the interim rule and the capital proposal by May 22, 2000.

ADDRESSES: Comments should refer to docket number R–1065 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (or mailed electronically to *regs.comments@federalreserve.gov*) and to Merchant Banking Regulation, Office of Financial Institution Policy, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Room SC 37, Washington, D.C. 20220 (or mailed electronically to financial.institutions@do.treas.gov). Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays. Comments addressed to the Treasury Department may also be delivered to the Treasury Department mail room between the hours of 8:45 a.m. and 5:15 p.m. at the 15th Street entrance to the Treasury Building.

FOR FURTHER INFORMATION CONTACT:

Board of Governors: Scott G. Alvarez, Associate General Counsel (202/452–3583), Kieran J. Fallon, Senior Counsel (202/452–5270), or Camille M. Caesar, Senior Attorney (202/452–3513), Legal Division; Jean Nellie Liang, Chief, Capital Markets (202/452–2918), Division of Research & Statistics; Michael G. Martinson, Deputy Associate Director (202/452–3640) or James A. Embersit, Manager, Capital Markets (202/452–5249), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Users of Telecommunications Device for the Deaf (TDD) *only* contact Janice Simms at (202) 872–4984.

Department of the Treasury: Joan Affleck-Smith, Director, Office of Financial Institutions Policy (202/622–2740), Gerry Hughes, Senior Financial Economist (202/622–2740); Roberta K. McInerney, Assistant General Counsel (Banking and Finance) (202/622–0480) or Gary Sutton, Senior Banking Counsel (202/622–0480).

SUPPLEMENTARY INFORMATION:

A. Executive Summary

This rule implements provisions of the recently enacted GLB Act that permit financial holding companies to make investments as part of a bona fide securities underwriting or merchant or investment banking activity. These investments may be made in any type of ownership interest in any type of nonfinancial entity (portfolio company), and may include any amount up to all of the ownership interests in the company. The investments that may be made under this new authority are substantially broader in scope than the investment activities otherwise permissible for bank holding companies, and are referred to as ''merchant banking investments.''

The interim rule does not address or apply to securities underwriting, dealing or market making activities conducted under section 4(k)(4)(E) of the Bank Holding Company Act (BHC Act). Moreover, the authority granted by section 4(k)(4)(H) of the BHC Act to financial holding companies to make merchant banking investments is an alternative to any other authority that the financial holding company may have to make investments in nonfinancial companies under other provisions of the Bank Holding Company Act except as specifically noted in the rule.

The interim rule sets forth the parameters within which financial holding companies may make merchant banking investments. As an initial matter, the GLB Act allows a financial holding company to make merchant banking investments if the financial holding company controls a securities affiliate or controls both an insurance underwriter and a registered investment adviser. The rule defines a securities affiliate for this purpose to be any registered securities broker or dealer.

The GLB Act contains provisions that are designed to help maintain the separation between banking and commerce by limiting the time period that a merchant banking investment may be held by a financial holding company and the circumstances under which the financial holding company may routinely manage or operate a portfolio company. In particular, the GLB Act provides that merchant banking investments may be held only for a period of time that enables the sale or disposition of the investment on a reasonable basis consistent with the financial viability of merchant banking investment activities. The rule provides that, in most cases, merchant banking investments may be held for a 10-year period. The rule allows a financial holding company to invest in a qualifying private equity fund for the term of the fund, up to 15 years under certain circumstances.

With respect to routinely managing or operating portfolio companies, the rule clarifies that director interlocks at the portfolio company and certain types of agreements and covenants that affect only extraordinary corporate events would not, as a general matter, be considered routine management or operation. The rule also provides that a financial holding company would be considered to be routinely managing or operating a portfolio company if the financial holding company establishes interlocks at the officer or employee level of the portfolio company or has certain other arrangements involving day-to-day management or participation in ordinary business decisions. The rule sets forth those limited circumstances when it is permissible for a financial holding company to routinely manage or operate a portfolio company, requires

documentation of these interventions, and limits the duration of the involvement.

The interim rule contains other provisions that are also designed to serve this fundamental purpose of maintaining the separation of banking and commerce as well as to promote the safe and sound conduct of merchant banking activities. In particular, the rule requires financial holding companies to establish policies and systems to monitor and assess the various risks associated with making merchant banking investments. The financial holding company must also establish policies for assuring the corporate separateness of companies held under the rule and limiting the potential that the financial holding company or its affiliated depository institutions may be legally liable for the financial obligations or operations of those companies. In addition, the rule implements the cross-marketing prohibitions of the GLB Act and the provisions of sections 23A and B of the Federal Reserve Act that restrict transactions between a depository institution and a portfolio company controlled by the same financial holding company.

Recordkeeping and reporting requirements are also established in order to promote compliance with the provisions of the rule and the safe and sound conduct of the activity. These records include documentation of transactions and relationships between a financial holding company, including each of its subsidiaries, and a company held under the merchant banking authority, with special attention paid to transactions and relationships that are not on market terms.

Also to limit the potential level of risk to a financial holding company and its affiliated depository institutions from merchant banking investments, the interim rule establishes aggregate investment limits. The new Subpart provides that a financial holding company may not make additional merchant banking investments if the aggregate carrying value of all merchant banking investments made by the financial holding company under the GLB Act exceeds (1) the lesser of 30 percent of its Tier 1 capital or $6 billion, or (2) the lesser of 20 percent of Tier 1 capital or $4 billion after excluding investments made by the financial holding company in private equity funds. A financial holding company may invest a greater amount with prior approval. As explained below, the Board and the Secretary believe these limits are necessary until appropriate capital rules are put in place and experience is gained in managing and supervising the risks of this activity.

Chief among the elements necessary to address safety and soundness is the appropriate capital treatment for merchant banking investments made by financial holding companies. The Board and the Secretary have developed a proposal to address the appropriate capital charge for merchant banking investments. This proposal seeks comment on an amendment to the Board's capital guidelines for bank holding companies that, in general, would apply a 50 percent capital charge to all merchant banking investments made under the interim rule. The capital proposal also requests comment on whether similar capital treatment should be applied at the holding company level to investments by bank holding companies and their subsidiaries in nonfinancial companies through small business investment companies (whether held directly by the bank holding company or by a depository institution controlled by the bank holding company), under Regulation K, in less than 5% of the shares of companies under section 4(c)(6) or 4(c)(7) of the BHC Act, or by an insured state bank subsidiary in accordance with section 24 of the Federal Deposit Insurance Act (FDI Act).

The interim rule is contained in a new Subpart J to the Board's Regulation Y and in a new Part 1500 of the rules of the Department of the Treasury. These new subparts are promulgated on an interim basis, effective on March 17, 2000, in order to provide guidance to financial holding companies regarding the definitions, limits and supervisory requirements that govern the activity of making merchant banking investments as soon as possible following the effective date of the relevant provisions of the GLB Act.

The capital proposal is described below, and is published separately in accordance with the requirements of the **Federal Register**.

The Board and the Secretary of the Treasury solicit comments on all aspects of the interim rule and will amend the rule as appropriate in response to comments received.

B. Background

Interviews With Securities Firms and Bank Holding Companies

In order to gather information about how firms currently make merchant banking investments, staff of the Federal Reserve System and the Department of the Treasury conducted interviews with a number of securities firms that currently make merchant banking investments. System staff and Treasury staff also interviewed several bank holding companies that make more limited types of investments under existing authority. The attached rule reflects information collected in these interviews and the experience of the System in supervising the more limited types of investment activities permissible for bank holding companies.

The interviews indicated that merchant banking investment activities conducted by major securities firms most often are conducted through private equity funds, which pool a financial institution's capital with funds from third-party investors. These investors are generally either institutions (such as other investment companies, pension funds, endowments, charitable organizations, investment units of financial institutions, and other companies) or individuals with high net worth. The securities firm is typically the sponsor and advisor to the fund as well as an investor in the fund. The private equity fund may be organized in corporate, partnership or other form, and by contract has a limited life that typically spans 10 years, with the possibility of limited extensions.

Private equity funds typically have features, including compensation arrangements, that—in addition to the limited life of the fund—strongly encourage the resale of investments made by the fund. As a result of these incentives and structural arrangements, and given current economic conditions, investments made by private equity funds are typically sold within a period of between 3 and 5 years. In addition, private equity funds typically have policies, review committees or other measures that encourage funds to diversify holdings and/or limit the amount of the fund's capital invested in a single portfolio company.

Securities firms also at times make merchant banking investments for the account of the securities firm and not through a private equity fund. These investments tended to be less significant than investments made through a private equity fund. The investment period for direct investments ranged from less than one year to somewhat longer than 10 years, with investments most often held for an average of 5 years under current conditions.

Securities firms and bank holding companies uniformly indicated that they apply higher internal capital charges against merchant banking investments than are applied to many other types of activities. The industry practice regarding the appropriate

internal measures of capital required to support merchant banking activities reflects the greater risks associated with these investments, including the volatility and illiquidity of many investments, and the fact that portfolio companies are themselves often leveraged companies. Private equity funds supported their investment activities almost exclusively with capital contributed by investors. Occasionally, private equity funds rely on short-term leverage that is repaid with a capital call on investors. However, private equity funds do not appear to rely to any significant extent on debt to fund investment activities.

Firms that make merchant banking investments impose internal capital charges that differ by firm and, in some cases, by type of investment. These capital charges range from 25 percent to 100 percent of the investment. Firms typically record investments initially at the lower of cost or market. Investments may be assigned an adjusted carrying value if a significant event occurs (such as an initial public offering, follow-up financing, or secondary capital raising events), subject to a discount that reflects the size of the firm's holding, the liquidity of the market for the shares held, the volatility of the market and other factors and that is applied prior to recognizing any unrealized gains on the investment. The securities firms all have policies for reviewing and recording the value of individual investments and the appropriate discounts to apply to the unrealized gains on investments.

Securities firms use a variety of methods to monitor the condition of portfolio companies. The most important involve receiving formal and informal reports on both a periodic basis and in the case of significant events, and maintaining representation on the board of directors of the portfolio company. Securities firms typically participate to the fullest extent allowed under their ownership interest in selecting the board of directors of a portfolio company and often select officers and employees of the firm to serve on the board of the portfolio company. These directors exercise the full rights and responsibilities of a member of the board, but are not expected to become involved in the routine management or operation of a portfolio company, as a general matter.

In both the private equity fund context and the direct investment context, securities firms indicated that the firm would on occasion become involved in routinely managing or operating a portfolio company. These interventions occur in limited situations when the merchant banker determines that intervention is necessary (1) to respond to an unusual event that directly affects the value of the investment, such as loss of portfolio company senior management, operational failures, major acquisitions, business plan changes and significant business losses, or (2) to facilitate the sale or disposition of the investment, such as participation in negotiations for sale of the portfolio company or the initial public offering of the company's shares. These interventions are temporary in most cases and usually take the form of increased consultation with the management of the portfolio company, exercise of review and veto rights over certain extraordinary decisions of management, replacement of management, and, in a small number of cases, temporary appointment of a representative of the investor as an officer of the portfolio company.

C. Interim Rule

The GLB Act specifically provides that the Board and the Secretary of the Treasury may issue regulations implementing section 4(k)(4)(H) that they jointly determine to be appropriate to assure compliance with the purposes and prevent evasions of the BHC Act and the GLB Act and to protect depository institutions, including limiting transactions between depository institutions and companies controlled under section 4(k)(4)(H) (12 U.S.C. 1843(k)(7)(A)) and reporting and recordkeeping requirements. The Board is also authorized by the BHC Act and other provisions of law to promulgate rules, including capital standards and reporting and recordkeeping requirements, consistent with the requirements and purposes of the BHC Act and other provisions.

The proposed interim rule reflects the information collected in the interview process in defining the parameters of merchant banking activities, allowable holding periods, involvement in the management and operation of portfolio companies and the monitoring and risk management systems these firms have developed. As noted above, securities firms and others that make merchant banking investments recognized that merchant banking investments are often riskier, less liquid and more volatile than many other types of investments and often involve an investment in a leveraged company. Consequently, these investments require greater capital support, careful monitoring and valuation systems, specific policies for addressing diversification of investments, and carefully developed limits on the amount of funds put at risk in the activity. In each of these areas, the interim rule and proposal are consistent with industry practices in making, monitoring and managing the risks associated with merchant banking investments.

At the same time, the Board and the Secretary recognize that, by its nature, an agency rule sets outside limits, and in several key areas—such as the duration of holding periods, internal capital charges, and level of involvement in management of portfolio companies—industry practice has been more conservative than—and well within—the outside parameters set by the rule and proposal. In setting outside limits, the Board and the Secretary do not intend to encourage behavior that is different than more conservative industry practice and expect to monitor merchant banking activities carefully and discourage migration from the norms for conducting these activities to the outer limits allowed under the rule and proposal.

While the rule is being adopted on an interim basis, the Board and the Secretary welcome comments on all aspects of the interim rule. These comments will be carefully considered and adjustments made to the interim rule as appropriate before its final adoption.

Section 225.170—What Investments Are Permitted Under This Subpart and Who May Make Them?

As noted above, section 4(k)(4)(H) and the interim rule permit a financial holding company to acquire or control shares, assets or ownership interests of any company that engages in activities that are not otherwise permissible for a financial holding company. Interests acquired or controlled under the interim rule are referred to as merchant banking investments, and a financial holding company must comply with the requirements of this interim rule in order to make such investments.

A financial holding company is not required to obtain the Board's approval or provide notice to the Board before the financial holding company begins making merchant banking investments or acquires a company that makes merchant banking investments. A financial holding company must, however, file notice with the Board under section 4(k)(6) of the BHC Act and section 225.87 of Regulation Y (12 CFR 225.87) within 30 days after commencing merchant banking investment activities or acquiring any company that makes merchant banking investments.

Section 4(k)(4)(H) provides that a financial holding company may acquire or control shares of a company under

that section ''as part of a bona fide underwriting or merchant or investment banking activity.'' The Board and the Secretary wish to emphasize the importance of this requirement in preventing circumvention of one of the fundamental purposes of the GLB Act of maintaining the separation of banking and commerce.

This requirement prevents the merchant banking authority from being used to engage in a nonfinancial activity. It distinguishes authorized merchant banking investments from strategic or other types of investments that are not permitted under the BHC Act or the GLB Act, such as the purchase of a commercial company or a real estate project made for the purposes of engaging in a commercial or other nonfinancial activity. Thus, for example, this authority could not be used by the financial holding company to engage in real estate development or other activities that have not been found to be financial.

This ''bona fide'' requirement does not prevent the acquisition of an interest in a company engaged in real estate development as part of a diversified portfolio of investments by the financial holding company in connection with its merchant banking business and in accordance with the other restrictions in the interim rule. The Board and the Secretary recognize that investments in real estate are often part of a diversified merchant banking portfolio. The Board and the Secretary believe, however, that the subpart would not allow a financial holding company to acquire a real estate development company if that acquisition represented all or substantially all of the holding company's investments claimed under this subpart. The rule includes this ''bona fide'' provision, and the Board will carefully monitor merchant banking investments to ensure that they meet this requirement and that the merchant banking authorization is not used by a financial holding company to engage in impermissible nonfinancial activities.

Under the statute and the rule, merchant banking investments include the full range of ownership interests, including securities, warrants, partnership interests, trust certificates, and other instruments representing an ownership interest in a company, whether the interest is voting or nonvoting. They also include any instrument convertible into a security or other ownership interest.

Under the statute and the rule, merchant banking investments may represent any amount of ownership interests in a portfolio company, whether or not that amount results in control for purposes of the BHC Act. Thus, this authority allows a financial holding company the flexibility to use its merchant banking authority to acquire or control a nominal amount of shares of a portfolio company or all of the ownership interests in a portfolio company.

The authority granted by section 4(k)(4)(H) is an alternative to the other authority granted to financial holding companies to make investments in nonfinancial companies under other provisions of the BHC Act.[1] Moreover, the rule does not address or apply to securities underwriting, dealing or market-making activities conducted under section 4(k)(4)(E) of the BHC Act.

The rule allows financial holding companies to make investments directly or through any subsidiary other than a depository institution or subsidiary of a depository institution.[2] The rule also incorporates the provision of the GLB Act that prohibits a financial holding company from making merchant banking investments on behalf of a depository institution or subsidiary of a depository institution. For purposes of the provisions of the rule, the term ''financial holding company'' refers to the financial holding company and any direct or indirect subsidiary of the holding company other than a portfolio company. The term ''financial holding company'' does not include a depository institution controlled by the financial holding company or any subsidiary of such a depository institution, except for purposes of the routine management provisions of section 171 and the recordkeeping and reporting provisions of section 174.

Subsection (e) allows a financial holding company to acquire and hold ''assets'' (other than shares or other ownership interests) of a company. In keeping with the stricture in section 4(k)(4)(H) that assets be ''of a company,'' subsection (e) requires that assets acquired as a merchant banking investment, such as real estate or assets of a division of an operating company, be promptly placed in and held through a portfolio company that maintains strict corporate separation from the financial holding company in order to limit the liability of the financial holding company and its financial and depository institution affiliates for the financial obligations and operating risks of the asset.

To take advantage of this new authority, section 4(k)(4)(H) of the BHC Act requires that a bank holding company become a financial holding company.[3] In addition, the financial holding company must control either (1) a securities affiliate or (2) both an insurance underwriter and an investment adviser, registered under the Investment Advisers Act of 1940, that provides investment advice to an insurance company. Subsection (f) incorporates this requirement.

Subsection (f) also defines a ''securities affiliate'' to include any broker or dealer registered with the Securities and Exchange Commission. The adoption of this definition would allow a broader range of financial holding companies to make merchant banking investments than a definition restricted to securities underwriting firms.

The Board and the Secretary request comment on whether this or another definition is appropriate. In particular, the Board and the Secretary request comment on whether ''securities affiliate'' should include a division of a bank that is registered as a municipal securities dealer. In this regard, the Board and Secretary seek comment on whether expertise or policies developed in the course of conducting specific types of securities activities may be necessary or appropriate for making merchant banking investments in a safe and sound manner.

As noted above, the rule adopts the language of section 4(k)(4)(H) of the BHC Act that allows investments in any company ''engaged in any activity not authorized pursuant to [section 4 of the Bank Holding Company Act],'' that is, any company engaged in an activity that is not financial in nature or incidental to a financial activity or otherwise permissible for a financial holding company to conduct.[4] This provision appears to have been included in recognition of the fact that other provisions of the BHC Act permit a financial holding company to make investments in companies that conduct

[1] For purposes of determining whether an investment qualifies under the alternative authority for making investments granted by Regulation K and by sections 4(c)(6) and (7) of the BHC Act, a financial holding company must generally aggregate all investments held by the financial holding company in a single company.

[2] A subsidiary of a member bank may make merchant banking investments only if, after five years, the Board and the Secretary jointly adopt rules in accordance with section 122 of the GLB Act that permit financial subsidiaries of member banks to make merchant banking investments.

[3] The Board recently adopted, on an interim basis, regulations governing the process by which a bank holding company may become a financial holding company. *See* 65 FR 3785 (January 25, 2000).

[4] Nothing in the merchant banking provision overrides the prior approval requirements of section 3 of the BHC Act that govern the acquisition of shares of a bank or bank holding company or the provisions of section 4(k)(6) and 4(j) of the BHC Act that govern the acquisition of shares of a savings association.

financial activities without resorting to merchant banking authority.

This distinction, however, may have practical consequences for private equity funds. As a result of this distinction in the statute and other provisions of the GLB Act, a private equity fund controlled by a financial holding company would appear to be prohibited from acquiring any additional financial company if any insured depository institution controlled by the financial holding company fails to have at least a satisfactory CRA rating, or, potentially, does not remain well managed and well capitalized. The Board and the Secretary request comment on this and on what, if any, amendments to the rule would be appropriate to deal with such affiliations within the requirements of the GLB Act.

Section 225.171—What Are the Limitations on Managing or Operating a Portfolio Company Held as a Merchant Banking Investment?

A financial holding company is prohibited by the GLB Act from routinely managing or operating a portfolio company except as may be necessary or required to obtain a reasonable return on the resale or disposition of the investment. Section 225.171 provides guidance on this statutory restriction.

Under this section, a financial holding company is considered to be engaged in routinely managing or operating a portfolio company if any director, officer, employee or agent of the financial holding company serves as or has responsibilities of an officer or employee of the portfolio company. The Board and the Secretary seek comment on whether any such interlocks would be appropriate.

Similarly, routinely managing or operating a company would include supervising any officer or employee of the portfolio company, other than through participation on the board of directors. The rule also defines routinely managing or operating a company to include any covenant or other contractual arrangement between the financial holding company and the portfolio company that would restrict the portfolio company's ability to make routine business decisions, such as entering into transactions in the ordinary course of business or hiring employees below the rank of the five most senior officers.

In addition, the rule defines routinely managing or operating a company to include participation in the day-to-day operations of the portfolio company. It also includes participation in management decisions made in the ordinary course of business of the portfolio company (other than decisions in which directors of a company customarily participate in their capacity as a director).

A financial holding company is not considered to be engaged in routinely managing or operating a portfolio company by virtue of having one or more representatives on the board of directors of the portfolio company. For this purpose, the Board's existing interpretations consider selection of a general partner to be the equivalent of selecting the board of directors. A representative of the financial holding company that serves as a director of a portfolio company may not routinely manage or operate the portfolio company, as discussed more fully above. In addition, in order for the financial holding company to have a director interlock without being considered to be routinely managing or operating a portfolio company, the portfolio company must employ officers and employees responsible for managing and operating the company, and no other arrangements or practices may exist that constitute routine management or operation of the portfolio company by the financial holding company.

The rule anticipates that representatives of the financial holding company will participate fully in matters typically presented to directors to the same degree as any other director. This permits the current practice of merchant bankers of placing representatives on the board of directors of a portfolio company in order to monitor the success of the company and assist at the board of directors level in overseeing and providing strategic advice to the management of the portfolio company. At the same time, the rule is intended to define as routine management or operation situations in which a representative of the financial holding company takes on responsibilities or is involved in decisions that are typically made by officers or employees of a portfolio company and not customarily considered by directors.

The section identifies a set of covenants and other written agreements between a financial holding company and a portfolio company, that, in the absence of circumstances that would indicate otherwise, are not considered to represent routinely managing or operating a portfolio company. These agreements and covenants may require the portfolio company to seek the approval of, or to consult with, the financial holding company before taking actions outside of the ordinary course of business, including (i) the acquisition of assets of another company; (ii) significant revision of the business plan; (iii) redemption, authorization or issuance of any shares of capital stock (including options, warrants or convertible shares) by the portfolio company; and (iv) the sale, merger, consolidation, spin-off, recapitalization, liquidation or dissolution of the portfolio company or any of its significant subsidiaries, or of all or substantially all of the assets of such company or subsidiary.

Under the Act and the rule, a financial holding company may routinely manage or operate a portfolio company under limited circumstances. The rule provides that this type of intervention is permitted only when necessary to address a material risk to the value or operation of the portfolio company. This might include a significant operating loss or a loss of senior management. This involvement must be temporary, and last only for the time necessary for the financial holding company to address the cause of involvement, obtain suitable alternative management arrangements, dispose of the investment or otherwise obtain a reasonable return on the investment. The rule would require a financial holding company to obtain Board approval to routinely manage or operate a portfolio company for a period greater than six months, and requires that a financial holding company document each instance of its involvement in routinely managing or operating a portfolio company.

The rule provides that a depository institution or subsidiary (other than a financial subsidiary held in accordance with section 5136A of the Revised Statutes or section 46 of the Federal Deposit Insurance Act) of a depository institution may not under any circumstances manage or operate a company held under this rule. This limitation would also apply to U.S. branches and agencies of foreign banks. The rule would, however, allow a director, officer or employee of a depository institution (or subsidiary of a depository institution) or U.S. branch or agency to serve as a director of a portfolio company to the same extent as would be permitted for a representative of a financial holding company.

As explained more fully below, the rule permits merchant banking investments to be made through so-called private equity funds that are subject to several limits different than those that apply to other merchant banking investments. The rule contemplates that a financial holding

company may control and manage a private equity fund or may be a passive investor in the fund. The restrictions on routinely managing or operating portfolio companies acquired or controlled by the private equity fund apply to both the financial holding company and the private equity fund.

The Board and the Secretary request comment on each of these provisions. In particular, comment is requested on whether there are additional situations in which a financial holding company should be permitted routinely to manage or operate a portfolio company consistent with the statute and its purpose of preventing the mixing of banking and commerce. Comment is also sought on whether additional agreements and covenants should be included in the list of arrangements that would not represent routine management or operation of the portfolio company.

Section 225.172—What Are the Holding Periods Permitted for Merchant Banking Investments?

The GLB Act requires that shares, assets and ownership interests be held only for a period of time that enables the sale or disposition of the interest on a reasonable basis consistent with the financial viability of the merchant banking activity. The rule incorporates this statutory limitation.

Consistent with industry practice, the rule generally would allow merchant banking investments to be held for a period of up to 10 years. Interests held by a financial holding company in private equity funds (defined below) could be held for the life of the fund, up to 15 years under circumstances described below.

The rule allows a greater period for holding merchant banking investments, including investments in or by private equity funds, in exceptional circumstances, with Board approval. To receive that approval, the financial holding company must explain the financial holding company's plan for divesting the investment. In determining whether to grant the extension, the Board may consider the cost to the financial holding company of disposing of the investment within the applicable time period. The Board may also consider the total exposure of the financial holding company to the portfolio company and the risks that disposing of the investment without an extension may pose to the financial holding company. In addition, the Board may consider market conditions and any other relevant information, such as the financial holding company's history of timely disposition of investments. The rule provides that a request for additional time must be filed at least 1 year prior to the expiration of the normal holding period.

The rule also establishes several supervisory restrictions designed to discourage investments from being held beyond the applicable period described above (i.e., 10 years in general, and up to 15 years under certain circumstances for investments made in a private equity fund). First, the rule requires a financial holding company that has held, owned, or controlled a merchant banking investment for longer than the applicable period to deduct 100 percent of the carrying value of its investment from the holding company's Tier 1 capital and does not allow the financial holding company to include any of the unrealized gains on the investment in its Tier 2 capital for regulatory purposes. The financial holding company is also prohibited from entering into any additional contractual arrangements or other relationships with the company or extending any additional credit to the company without Board approval. These requirements would apply in addition to any restrictions that the Board might impose in granting approval for an extended holding period.

As noted above, the rule establishes somewhat different holding periods for investments made in private equity funds. The rule defines a ''private equity fund'' based on prevalent industry practice. A qualifying private equity fund is defined as any company that is not an operating company and that engages exclusively in merchant banking activities. The fund may be organized in any form, including a partnership, corporation or limited liability company. The fund may, but need not be, registered as an investment company under the Federal securities laws.

To meet the rule's definition, a private equity fund must be owned by at least 10 investors that are unrelated to the financial holding company (and are not officers, directors, employees or principal shareholders of the financial holding company) and the financial holding company (including its officers, directors, employees and principal shareholders) may not own or control more than 25 percent of the equity capital of the fund. The rule does not impose any limits on advisory fees or on the various types of incentive compensation that the financial holding company may receive for services rendered to the fund (except to the extent the fee increases the equity capital owned or controlled by the financial holding company above the 25 percent threshold described above).

To qualify, a fund must invest in shares, assets or ownership interests of companies for the purpose of reselling or disposing of them and must establish a plan for the resale or disposition of its investments. In addition, the fund must have a limited life that does not exceed 12 years, with the possibility of three 1-year extensions with the approval of persons holding a majority of the fund's equity. The rule does not, however, impose the 10-year holding period on portfolio companies held by private equity funds.

A fund cannot ''routinely manage or operate'' the portfolio companies in which it invests except in the situations identified in section 225.171. A fund is also expected to have policies to address diversification of its portfolio, which may include single investment limits, review of large investments by investors other than the adviser, or other approaches. Finally, the fund must not be established or operated to evade the limitations on merchant banking activities contained in the GLB Act or the rule.

A financial holding company may, without Board approval, own or control a private equity fund that meets these requirements for the term of the fund up to 12 years, plus three additional one-year increments that may be obtained with the approval of a majority of the investors in the fund. In addition, different aggregate limits, reporting requirements and recordkeeping requirements apply to private equity funds and interests held by a financial holding company in private equity funds.

Moreover, as explained more fully below, the restrictions on cross-marketing, the limitations of sections 23A and 23B of the Federal Reserve Act, and the reporting and recordkeeping requirements of the rule, do not apply to a financial holding company that holds a passive interest in a private equity fund that is controlled or sponsored and advised by an unrelated third party. These requirements, however, would apply to a financial holding company that controls the private equity fund.

These differences recognize that private equity funds typically are established for the purpose of making investments for resale and have a limited term and a number of other incentives and terms that encourage the resale or disposition of investments within a reasonable period. Importantly, investments made by private equity funds also are monitored by outside

investors that encourage resale of investments.

A financial holding company may also own an interest in or control an investment vehicle or fund that makes merchant banking investments but that does not meet the rule's definition of a private equity fund. If a financial holding company controls the investment vehicle or fund, then investments made by the investment vehicle or fund are subject to the 10-year holding period and the other provisions of the rule governing ownership or control of a portfolio company. If a financial holding company owns an interest in, without controlling, such an investment vehicle or fund, the interest is treated as an interest in a portfolio company for purposes of the rule.

The rule also contains a provision that prevents a financial holding company from attempting to circumvent the holding periods by transferring merchant banking investments from one company or fund to another. The rule also provides that, for purposes of calculating compliance with the merchant banking holding periods, an investment acquired by the financial holding company under another authority that imposes a restriction on the amount of time that the financial holding company may hold the investment is considered to have been acquired on the original acquisition date.

The Board and the Secretary request comment on whether the approach taken in the rule is appropriate or whether more specific limits on investments should be adopted. The Board and the Secretary also request comment on whether additional incentives are necessary or appropriate to assure that merchant banking investments are held only for a reasonable period consistent with the financial viability of the activity.

The Board and the Secretary also request comment on whether it is appropriate or useful to establish different rules for holding periods and other requirements for merchant banking investments made in and through private equity funds than those made by a financial holding company directly or otherwise. If it is appropriate and helpful, comment is invited on whether the proposed rule properly defines private equity funds and whether the limits contained in the rule are consistent with the requirements and purposes of the GLB Act and the BHC Act.

Section 225.173—What Aggregate Limits Apply to Merchant Banking Investments?

The authority to make merchant banking investments is newly granted to those bank holding companies that have been certified as financial holding companies. As noted above, this authority is in addition to other authority provided to all bank holding companies (including financial holding companies) under the BHC Act to make investments. These existing authorities allow investments in nonfinancial companies to be made through small business investment companies, outside the United States under Regulation K, and in up to 5 percent of the voting shares of any company. In addition, a financial holding company may make investments under the GLB Act through insurance underwriting companies.

The Board and the Secretary are concerned that rapid expansion of merchant banking activities, particularly given the flexibility provided for such investments under the GLB Act, may pose new and potentially significant risks to the safety and soundness of depository institutions affiliated with financial holding companies engaged in these activities. These risks seem particularly apparent and material if the financial holding company commits a significant portion of its capital to merchant banking investments without appropriate systems for monitoring and managing the risks of these activities, or if the financial holding company does not reserve sufficient capital to take account of the risks of these investments.

Accordingly, until such time as the agencies and the industry have gained experience with supervising these activities and the rules governing the regulatory capital treatment of these investments are in place, the rule establishes two aggregate limits on merchant banking investments. The first threshold prevents a financial holding company from making additional merchant banking investments (including making additional capital contributions to a company held under the rule) if the aggregate carrying value to the financial holding company of all its merchant banking investments exceeds the lesser of 30 percent of the financial holding company's Tier 1 capital or $6 billion. A second sublimit applies to the aggregate carrying value of all merchant banking investments excluding investments made by the financial holding company in private equity funds. This sublimit is the lesser of 20 percent of the financial holding company's Tier 1 capital or $4 billion.

The rule provides that a financial holding company may exceed either threshold with the prior approval of the Board. This gives the Board flexibility to deal with circumstances that may arise before final action in this area on the Board's capital proposal.

In establishing these limits, the Board and the Secretary have considered that many securities firms that make merchant banking investments and many bank holding companies that conduct more limited investment activities already impose internal limits on the aggregate amount of capital that they will commit to these investments. The Board and the Secretary have also considered the current levels of investment activities of bank holding companies under existing authority. Neither threshold contained in the interim rule would apply to the existing activities of bank holding companies (or financial holding companies) conducted under other authority, such as authority to own a small business investment company, authority to make investments abroad under Regulation K, or authority to acquire 5 percent or less of the voting shares of any company.

The Board and the Secretary request comment on whether these thresholds are appropriate, and, if the thresholds are retained, whether they should be increased or decreased, whether the mechanism for Board approval to exceed the thresholds should be retained, and whether the thresholds should be based on the initial cost of investments or the carrying value of investments. The Board and the Secretary also request comment on whether the limits on merchant banking investments should be structured to take account of the types and levels of other kinds of investments made by financial holding companies. In particular, should a higher limit be set for financial holding companies that do not have significant investments under other authorities.

The Board and the Secretary expect to revisit these limits in connection with consideration of the final capital rules for this activity and as the agencies and the industry gain experience in conducting and supervising merchant banking activities and in implementing the proposed capital rules for investment activities.

Section 225.174—What Risk Management, Reporting and Record Keeping Policies Are Required To Make Merchant Banking Investments?

This section requires financial holding companies to adopt policies, procedures and systems reasonably designed to manage the risks associated

with making merchant banking investments. It also requires policies and systems designed to monitor compliance with the statutory and regulatory provisions governing these activities. A financial holding company that controls a private equity fund or other company that makes investments under the interim rule is expected to establish the same types of systems and policies for monitoring and managing the risks of merchant banking investments acquired or controlled by the private equity fund or company as those required for other types of merchant banking investments.

The list of policies, procedures and systems contained in the interim rule, as well as the recordkeeping requirements, are not intended to be exclusive. Instead, these lists are representative of the types of policies, procedures and systems that are important elements of a sound approach to monitoring merchant banking investment activities, and others will be needed to address the particular approach that each financial holding company takes to making merchant banking investments. Beyond the procedures and systems required by the rule, it is essential to prudently and profitably making merchant banking investments that a financial holding company retain qualified personnel and carefully manage and oversee investment decisions.

Each financial holding company is expected to institute appropriate policies and systems to monitor and manage investment activities before the company commences the activity. The Board expects to conduct a review of the policies and systems, in particular the investment and risk management systems, of each financial holding company that makes merchant banking investments within a short period after the holding company commences the activity.

Among the policies and systems that a financial holding company is expected to establish are policies and systems designed to identify and assess adequately the value of individual investments and of the aggregate portfolio. These systems must also adequately assess the total exposure of the financial holding company to each company acquired under the rule, and the diversification of the portfolio. A financial holding company must be able to identify and manage the market, liquidity, credit and other risks associated with merchant banking investments and the terms, amounts and types of transactions between the financial holding company (and each of its subsidiaries) and each company acquired under the rule.

In addition, the policies and systems must be adequate to maintain corporate separateness between the financial holding company and each portfolio company and sufficient to protect the financial holding company from legal liability for the conduct of operations and for the financial obligations of portfolio companies. The financial holding company must also develop policies and a business structure to limit the legal liability of the financial holding company for the financial obligations and operating risks that may flow through a private equity fund controlled by the financial holding company. This may include establishing a corporation or limited liability company that would be the general partner of a private equity fund controlled by the financial holding company.

Moreover, these systems and policies must be adequate for ensuring compliance with the statutory and regulatory provisions governing merchant banking activities, including the limits on holding period, routinely managing or operating a portfolio company, and the cross-marketing and inter-company transaction limits imposed under other provisions of the GLB Act or other law.

Subsection (b) requires generally that a financial holding company maintain at a central location certain types of records and supporting information. This section contemplates that financial holding companies will be able to satisfy these record keeping requirements by using reports and records that are prepared in the ordinary course of making a merchant banking investment or controlling a private equity fund and used to inform third-party investors of the type and status of merchant banking investments.

In particular, these records and materials must document the company's policies for making merchant banking investments and for managing and monitoring the various risks and exposures created by these activities. These records would include, for example, documentation of the review process for making investments and for properly assessing the value of each investment. In addition, these records must detail the investment amount, carrying value, market value, performance data and financial statements for each merchant banking investment.

These records must also include records of transactions between the financial holding company and companies held under the rule. In particular, these records must document transactions that are not on market terms.

The financial holding company would be expected to make available any reports, including valuations of investments, given to co-investors by the financial holding company or given to other investors in a private equity fund. The financial holding company is also expected to document incentive arrangements (sometimes called overrides or carried interests) in connection with advising or controlling a fund under this rule, including the carrying value and market value of the arrangement and amounts distributed under the arrangement that may be contingent on future asset performance.

Subsection (c) establishes annual and quarterly reporting requirements regarding merchant banking investments. The annual report focuses on investments that have been held for a period longer than five years. A private equity fund controlled by a financial holding company is only required to provide annual reports regarding investments that have been held by the fund for a period longer than eight years. A financial holding company that has made a passive non-controlling investment in a private equity fund is only required to report its investment in the fund as part of an annual report after eight years and is not required to report investments held by the fund.

The annual report must list and describe each investment held for the applicable period (*i.e.,* longer than eight years in the case of private equity funds and longer than five years in all other cases) as of the date of the report. In addition, the report must briefly describe the historical cost of the investment, the market valuation of the investment as of the reporting date, and the schedule for divestiture of the investment. A financial holding company that does not sell or dispose of an investment within eight years (including in the case of private equity funds) must include in its annual report a detailed divestiture plan for the investment.

The annual report must also include aggregate data regarding the merchant banking investments made by the financial holding company broadly divided by category. These categories would be divided by general industrial sector, geography (national, international or regional as appropriate), and holding periods.

The quarterly report focuses entirely on aggregate data regarding the financial holding company's merchant banking portfolio. The report would require quarterly reporting of the total number

of investments made under the merchant banking authority, the aggregate cost of these investments, and the current valuation of the merchant banking portfolio (including any value assigned to any incentive arrangements related to a private equity fund). These aggregates would be reported for several categories of investment, such as investments made in private equity funds, investments made in publicly traded securities, and investments made in ownership interests that are not publicly traded.

The Board expects shortly to issue forms that may be used to comply with the annual and quarterly reporting requirements.

Section 4(k)(6) of the BHC Act requires a financial holding company to provide written notice to the Board within 30 days after acquiring any company under any authority granted in section 4(k). Merchant banking investments, by their nature, must be temporary and held for resale. Consequently, the Board believes that the filing of notice in connection with the acquisition of a company done in the course of conducting merchant banking activities is generally not needed, except in the context of large investments. Notice of substantial investments made under the merchant banking authority would allow the Board to monitor financial holding companies that have large exposures to single portfolio companies.

On this basis, the rule provides that a financial holding company will fulfill the notice requirements of section 4(k)(6) of the BHC Act in connection with its merchant banking activities if the company files a notice with the Board within 30 days of making an acquisition of a company under the rule only in the situation where both: (1) The acquisition represents in excess of 5 percent of the voting shares, assets or ownership interests of the company and (2) the cost of the investment exceeds the lesser of 5 percent of the Tier 1 capital of the financial holding company or $200 million. This notice must briefly indicate the cost and funding of the investment, the percentage of regulatory capital that the investment represents, the nature of the company acquired and the type of investment, and the risk management measures that apply to this investment. A financial holding company qualifies for this streamlined notice procedure only if the financial holding company has notified the Board under section 225.87 of Regulation Y that the financial holding company has commenced or acquired a company engaged in making merchant banking investments.

Comment is invited on each of the recordkeeping and reporting requirements. In particular, comment is sought on whether the requested information would be readily available and valuable if provided in either a quarterly or annual report, and on the burdens associated with the proposed reporting requirements. Comment is also requested on whether it is appropriate to provide different reporting requirements for investments made by and in private equity funds than other types of merchant banking investments.

Section 225.175—How do the Statutory Cross-Marketing and Section 23A and B Limitations Apply to Merchant Banking Investments?

The GLB Act prohibits depository institutions controlled by the financial holding company from marketing or offering, directly or through any arrangement, any product or service of a company held under the rule or allowing any product or service of the depository institution to be offered or marketed, directly or through any arrangement, by or through any company held under section 4(k)(4)(H). Section 225.175 of the interim rule implements this prohibition. In addition, this section includes the statutory presumption regarding control by a financial holding company of a company held under section 4(k)(4)(H) for the purposes of sections 23A and 23B of the Federal Reserve Act.

Subsection (a) addresses the prohibition on cross-marketing. The cross-marketing restrictions would apply to cross-marketing between a depository institution controlled by a financial holding company and any portfolio company, private equity fund or other investment vehicle in which the financial holding company has an interest under this subpart. The restrictions would not apply to cross-marketing with a portfolio company that is owned by a private equity fund or other investment vehicle, however, unless the financial holding company controls the private equity fund or investment vehicle. Where control exists, the financial holding company is deemed by the BHC Act to indirectly own the shares of the portfolio company held by the private equity fund or investment vehicle.

The restrictions on cross-marketing are applied to the U.S. branches and agencies of foreign banks that conduct merchant banking activities in the United States or through a U.S. company. The cross-marketing restrictions also apply to any subsidiary of a depository institution, other than a financial subsidiary held in accordance with section 5136A of the Revised Statutes or section 46 of the Federal Deposit Insurance Act.[5] These so-called operating subsidiaries are considered to be and are authorized as a part of the depository institution.

Neither the GLB Act nor the rule applies these restrictions to cross-marketing by nondepository affiliates of the financial holding company. Moreover, the rule does not apply these restrictions to companies in which the financial holding company, either directly or through a private equity fund or other investment vehicle, owns less than 5 percent of the voting shares.

The rule does not define cross-marketing activities. Cross-marketing would not appear to cover efforts by a depository institution to syndicate a loan made to a portfolio company, the purchase by a depository institution for its own use of products or services of a portfolio company, or the provision of services or extensions of credit by the depository institution directly to the portfolio company. These latter two types of transactions would, of course, be governed by the requirements of sections 23A and 23B if the portfolio company is an affiliate of the depository institution.

The Board and the Secretary request comment on whether it would be useful to include a definition of cross-marketing activities in the rule, and if so, invite comment on an appropriate definition. The Board and the Secretary also seek comment on the scope of the cross-marketing restrictions. In particular, comment is invited on whether these restrictions should be applied more broadly than in the interim rule or whether the statute permits a more limited application.

Subsection (b) establishes a rebuttable presumption of control for purposes of the restrictions contained in section 23A and 23B of the Federal Reserve Act on transactions between an insured depository institution and its affiliates. Under sections 23A and 23B, certain types of transactions between an insured depository institution and an affiliate are subject to specific quantitative, qualitative and collateral requirements.

Under the presumption contained in the GLB Act, a financial holding company or other person that, directly or indirectly, or acting through one or more other persons, owns or controls 15 percent or more of the equity capital of

[5] A financial subsidiary may engage in many of the activities permissible for a financial holding company, but may not engage in merchant banking activities, certain insurance underwriting activities, or real estate investment or development activities.

any company held under this subpart is presumed to control that company. Equity capital includes voting and nonvoting shares, warrants, options and other instruments convertible into equity capital. The presumption may be rebutted with the agreement of the Board and the rule allows a financial holding company to submit any relevant information in an effort to rebut this presumption.

The rule also applies sections 23A and 23B to covered transactions between a U.S. branch or agency of a foreign bank and (1) any portfolio company controlled by the foreign bank or an affiliate of the foreign bank, and (2) any company controlled by the foreign bank or an affiliate that is engaged in making merchant banking investments. For purposes of determining whether a foreign bank or affiliate controls a company, the rule applies the rebuttable presumption applicable to domestic financial holding companies. These provisions promote competitive equity and safe and sound banking. The rule is intended to restrict lending by a foreign bank's branches and agencies to portfolio companies and to affiliated companies that are actually engaged in making merchant banking investments. It is not intended to restrict otherwise permissible lending to parent companies or other affiliated companies, unless the proceeds of such lending would be used by these companies to make, or fund the making of, merchant banking investments under this subpart.

The rule recognizes that a financial holding company may make a passive investment in a private equity fund. In this case, the rule clarifies that a company controlled by a private equity fund will not be presumed to be an affiliate of a depository institution controlled by a financial holding company that has made an investment in the private equity fund unless the financial holding company controls the fund or has sponsored and advises the fund.

Comment is invited on each of these provisions. In particular, comment is requested on whether there are specific situations that should be included in the rule in which the presumption under section 23A and 23B should, by rule, be considered to be rebutted. Comment is also requested on the provisions applying sections 23A and 23B to certain transactions involving U.S. branches and agencies of foreign banks.

D. Capital Adequacy Proposal

As discussed above, many firms that make merchant banking investments and engage in other types of investment activities internally allocate capital to these investments that is higher than they allocate to most banking assets in light of the greater risk, illiquidity and volatility of merchant banking and similar investments and the higher leverage that often is associated with portfolio companies. The internal capital allocation for these investments is generally many multiples of the current regulatory capital charge.

After consideration of the industry practice and in consultation with the Secretary, the Board is proposing to modify the methods of calculating the risk-weighted and leverage capital ratios for bank holding companies to better address the risks associated with merchant banking and other investment activities. This capital proposal, which is described below and published separately, is based on information about firm accounting and capital policies that System and Treasury Department staff gathered in interviews with securities firms and bank holding companies that currently conduct merchant banking and other investment activities. The Board and the Secretary also note that the proposed capital treatment is similar to the approach to capital sufficiency that the Federal Deposit Insurance Corporation has adopted under section 24 of the FDI Act for investment in subsidiaries that engage in principal activities that are not permissible for a national bank.

The Board and the Secretary view this capital proposal as a precaution that is necessary to prevent the buildup within banking organizations of excessive risk from merchant banking and other investment activities. In developing this proposal, they have considered the effect of the proposal on the existing activities of bank holding companies.

As an initial matter, adoption of the capital proposal would *not* prevent any bank holding company from becoming a financial holding company or from taking advantage of the new powers granted under the GLB Act. The capital charge would be applied only at the holding company level on the consolidated organization. Consequently, the capital proposal would not affect the capital levels of any depository institution—which, under the GLB Act, determine whether a company qualifies to be a financial holding company—controlled by a bank holding company.

In addition, the Board and the Secretary have reviewed a sampling of call reports of bank holding companies engaged currently in significant investment activities, including companies that are likely to seek to become financial holding companies. This review indicates that, with virtually no exception, bank holding companies would remain well capitalized on a consolidated basis even after applying the proposed capital charge on all of the investments currently made by these companies. Moreover, nearly all of these companies would be able to increase significantly their level of investment activity and continue to be well capitalized on a consolidated basis after applying the proposed capital charge.

For these reasons, the capital proposal is not expected to have an effect on the level of investment activities conducted by bank holding companies. The capital proposal would, however, help to limit the potential harm to bank holding companies and depository institutions controlled by bank holding companies from the risks associated with investment activities.

The proposal is being published for comment and, unlike the rule discussed above, is not being made effective on an interim basis. During the comment period, the Board and the Secretary will discuss the issues raised by this proposal with the other Federal banking agencies and with other appropriate functional regulators.

Under the proposal, a financial holding company would be required to deduct from its regulatory Tier 1 capital an amount equal to 50 percent of the total carrying value, as reflected on consolidated financial statements of the financial holding company, of all merchant banking investments. The financial holding company would deduct 100 percent of the carrying value of such investments from the assets of the financial holding company for capital purposes.[6]

This capital charge would apply to all equity instruments and all debt instruments that are convertible into equity held under the merchant banking authority. It also would apply to all debt extended by a financial holding company to a portfolio company in which the financial holding company owns 15 percent or more of the total equity. The proposal contains exceptions for short-term secured loans

[6] Some investments are booked using ''available for sale'' (AFS) accounting. Under this accounting treatment, unrealized gains are *not* recognized in net income, and flow to a special segregated equity account that is not recognized as Tier 1 capital by the regulatory agencies. Under the current bank holding company capital rules, 45 percent of the gain on AFS equity securities may be included in Tier 2 capital. The proposal would continue this treatment but further require deduction from Tier 1 capital of 50 percent of the reported cost (or fair value if lower for equity securities) of investments recorded as AFS. The reported cost or fair value of these investments would be deducted from risk-weighted and average consolidated assets.

for working capital purposes, for loans in which at least half has been participated to third parties, and for loans that are guaranteed by the United States government. An exception is also proposed for extensions of credit by a depository institution controlled by the bank holding company that are fully collateralized in accordance with section 23A of the Federal Reserve Act and meet the other requirements of that section.

The proposal would apply the same capital treatment to investments in nonfinancial companies held under Regulation K, in less than 5% of the shares of any company under sections 4(c)(6) or (7) of the BHC Act, held through an SBIC that is controlled by the bank holding company or a subsidiary depository institution, or held by a state bank subsidiary in accordance with section 24 of the FDI Act. This capital treatment would not apply to investments that are held in a trading account in accordance with applicable accounting principles and that are part of an underwriting, market making or dealing activity. Comment is requested on whether this exclusion is appropriate. In addition, comment is invited on whether passive investments in less than 5 percent of the shares of publicly traded companies, where there is a ready market, should also be excluded or subjected to a lesser capital charge.

The proposal applies the capital treatment to nonfinancial investment activities conducted by bank holding companies and their subsidiaries as well as to merchant banking investments for several reasons. Importantly, the risks associated with these investment activities do not vary according to the authority used to conduct the activity. Thus, similar investment activities should be given the same capital treatment regardless of the source of legal authority to make the investment. In addition, current regulatory capital treatment, which applies an 8 percent minimum capital charge to investments, was developed at a time when the investment activities of banking organizations were relatively small. In recent years, some bank holding companies have greatly expanded the level of their investment activities. The Board's capital proposal reflects the judgment that it is appropriate at this time, when the investment authority of banking organizations has also been greatly expanded, to revisit and revise regulatory capital treatment for all investment activities.

The capital charge would not be applied to investments made by insurance company subsidiaries of financial holding companies held in accordance with section 4(k)(4)(I) of the BHC Act. The Board expects soon to seek comments on a proposal to de-consolidate functionally regulated insurance underwriting companies from the financial holding company for purposes of applying the Board's consolidated capital rules. The proposal would take account of the different accounting standards, business practices, and capital and supervisory regimes that apply to insurance underwriting companies.

The Board and the Secretary recognize that the new authority accorded financial holding companies under the GLB Act may raise the possibility for arbitrage between an insurance company and its financial holding company affiliates designed to avoid the capital charges proposed for merchant banking and other investments. The Board and the Secretary seek comment on whether provisions should be included in the final capital rule that would apply to investments made through an insurance company the same capital charge at the holding company level as would be applied to merchant banking and other investments if the Board finds that such arbitrage is occurring within a particular holding company. The Board and the Secretary also invite comment on whether there are other mechanisms that would prevent such arbitrage.

During the period prior to adoption of a final capital rule, financial holding companies that engage in merchant banking activities will be expected to adopt and implement internal capital and accounting policies that reflect the liquidity, market and other risks associated with the company's investment activities. An initial criterion for these internal capital and accounting policies is that they be capable of enabling the financial holding company to meet the terms of the proposed capital rule on its effective date, with minimal adjustment, and remain in compliance with applicable regulatory capital standards.

The separate capital proposal requests comment on all aspects of the proposed capital charge, including the appropriateness of a separate capital charge for investment activities and the amount of the charge. For convenience, a detailed description of the proposed amendments to the Board's capital appendices follows.

Section II. B of Appendix A to Part 225 would be amended by adding a new clause (v) at the end of the introductory paragraph stating that portfolio investments must be deducted from the sum of core Tier 1 capital elements in the manner provided by the proposal. Section II. B would also be amended by adding a new section II.B.5 governing portfolio investments. This new provision would provide that fifty percent (50%) of the value of all portfolio investments made by the parent bank holding company or by its direct or indirect subsidiaries must be deducted from the consolidated parent banking organization's core Tier 1 capital components.

The proposal defines a portfolio investment as any merchant banking investment made directly or indirectly by a financial holding company under section 4(k)(4)(H) of the BHC Act, and any investment made directly or indirectly in a nonfinancial company by any bank holding company pursuant to section 4(c)(6), or 4(c)(7) of the BHC Act, section 211.5(b)(1)(iii) of the Board's Regulation K, section 302(b) of the Small Business Investment Act of 1958, or by an insured state bank subsidiary in accordance with section 24 of the FDI Act.

For this purpose, an investment would include any equity instrument and any debt instrument with equity features (such as conversion rights, warrants or call options). If the bank holding company owns or controls 15 percent or more of the company's total equity, the term also would include any other debt instrument held by the bank holding company or any subsidiary, except for (i) any short-term, secured extension of credit provided for working capital purposes, (ii) any extensions of credit by an insured depository institution controlled by the bank holding company that is collateralized in accordance with the requirements of section 23A of the Federal Reserve Act and that meets the other requirements of that section, (iii) any extension of credit at least 50 percent of which is sold or participated out to unaffiliated persons on the same terms and conditions that applied to the initial credit, and (iv) any extension of credit that is guaranteed by the U.S. Government. The capital charge would not apply to investments that are held in the trading account in accordance with applicable accounting principles and that are part of an underwriting, market making or dealing activity. For portfolio investments that are reported at cost, under the equity method, or at fair value with unrealized gains (or losses) included in earnings, the deduction would be equal to 50 percent of the carrying value of the investment. For available-for-sale portfolio investments reported at fair value with unrealized gains (or losses) included in other comprehensive income, the amount of the deduction

would equal 50 percent of the reported cost of the investment.[7] Any unrealized gains on available-for-sale investments are not included in core capital, but may be included in supplementary capital to the extent permitted under section II.A.2.e of the Appendix.

For portfolio investments in companies that are consolidated for accounting purposes, the deduction would equal 50 percent of the parent organization's investment in the company as determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the consolidated bank holding company's core capital in accordance with section II.B.1 of the Appendix). The company would remain fully consolidated for purposes of determining the banking organization's risk-weighted assets.

The total carrying value of any portfolio investment subject to the deduction is excluded from the bank holding company's weighted risk assets for purposes of computing the denominator of the company's risk-based capital ratio. For AFS portfolio investments, this exclusion would apply to the reported cost or, in the case of AFS equity investments where fair value is less than historical cost, reported fair value.

The proposal makes conforming changes to section II.b of Appendix D to include portfolio investments in the list of items that are excluded from Tier 1 capital.

Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this rulemaking. The rule implements provisions of section 103 of the GLB Act that allow entities that have become financial holding companies to enter the merchant banking business.

The interim rule includes limited reporting and recordkeeping requirements that apply to all financial holding companies that engage in merchant banking, regardless of their size. The reporting and record keeping requirements that the rule establishes on an interim basis are necessary to enable the Board to execute properly its supervisory function and to ensure compliance by financial holding companies with the limitations imposed by the GLB Act on merchant banking activities. These statutory limits apply to all financial holding companies, regardless of size, engaged in merchant banking activities. The Board believes that the information required to be submitted or retained, in most cases, would be contained in routine reports to management, to third-party investors, or to other regulatory agencies, including the Securities and Exchange Commission, or would be prepared and retained by an organization in the normal conduct of its investment activities.

The ability of financial holding companies to participate in the merchant banking business will likely enhance their overall efficiency and ability to compete effectively in the market for corporate financial services. The Board specifically seeks comment on the likely burden that the interim rule and proposed rule will impose on financial holding companies that engage in merchant banking activities and other financial holding companies.

Executive Order 12866 Determination

The Department of the Treasury has determined that this interim rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

Administrative Procedure Act

The provisions of the rule are effective on March 17, 2000 on an interim basis. Pursuant to 5 U.S.C. 553, the Board and the Secretary of the Treasury find that it is impracticable to review public comments prior to the effective date of the interim rule, and that there is good cause to make the interim rule effective on March 17, 2000, due to the fact that the rule sets forth procedures to implement statutory changes that were recently enacted and that became effective on March 11, 2000. The Board and the Secretary of the Treasury are seeking public comment on all aspects of the interim rule and will amend the rule as appropriate after reviewing the comments.

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The interim rule imposes no additional reporting, disclosure, or other new requirements on an insured depository institution because the new activities that the rule governs cannot be conducted by an insured depository institution. For this reason, section 4802(b)(1) does not apply to this rulemaking.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in the interim rule are found in 12 CFR 225.171(d)(3); 225.172, and 225.174. This information is required to evidence compliance with the requirements of Title I of the GLB Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)), which amends section 4 of the Bank Holding Company Act (12 U.S.C. 1843), and to allow the Board to properly exercise its supervisory responsibility for financial holding companies. The respondents are financial holding companies that choose to engage in merchant banking activities.

The interim rule requires that a financial holding company submit an annual report to the Reserve Bank relating to merchant banking investments that have been held for an extended period of time and providing aggregate information on merchant banking investments (see 12 CFR 225.174(c)(1)) and file quarterly reports with the Reserve Bank providing aggregate data on the company's merchant banking investments (see 12 CFR 225.174(c)(2)). The Board expects to publish a separate notice to issue reporting forms that may be used to comply with the annual and quarterly reporting requirements. The burden associated with these information collections will be addressed at that time.

The interim rule also requires that a financial holding company file a notice with the Reserve Bank within 30 days of making a large merchant banking investment (see 12 CFR 225.174(d)). The agency form number for this declaration will be the FR 4018. In addition, the rule allows a financial holding company to seek relief from the holding period and aggregate investment limits imposed by the rule by filing a request and supporting documentation with the Board (see 12 CFR 225.172(b) and 225.173). The agency form number for these requests will be FR 4019. There will be no formal reporting form for these notices and requests. The information may be submitted in the form of a letter. The Board expects to

[7] For available-for-sale equity investments where fair value is less than historical cost, the amount of the deduction is equal to 50 percent of reported fair value. The unrealized losses on such investments are deducted from core capital in accordance with section II.A.1.a of the Appendix.

receive very few of these notices and requests. The Board estimates that approximately 250 financial holding companies will engage in merchant banking activities in the first year after adoption of the interim rule. Of the 250 financial holding companies, the Board estimates that 100 will file these notices and requests and that these companies will spend approximately 1 hour to prepare these filings, resulting in an estimated annual burden of 100 hours. Based on a rate of $50 per hour, the annual cost to the public would be $5000.

The interim rule also requires that a financial holding company engaged in merchant banking activities establish and maintain certain policies, procedures, and systems to appropriately monitor and manage its merchant banking activities and maintain certain records relating to the company's merchant banking activities (see 12 CFR 225.171(d)(3), and 225.174(a) and (b)). The Federal Reserve believes that most of these internal control and record keeping requirements are consistent with those established and maintained by organizations in the normal course of conducting a merchant banking business. The Board estimates that the 250 financial holding companies will spend approximately 5 hours in complying with these internal control and recordkeeping requirements, resulting in an estimated annual burden of 1,250 hours. Based on a rate of $50 per hour, the annual cost to the public would be $62,500.

The Federal Reserve specifically requests comment on the accuracy of these burden estimates. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Board has displayed a currently valid OMB control number. The OMB control number for these information collections is 7100–0292. A financial holding company may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the GLB Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the interim rule easier to understand, including answers to the following questions:

(1) Has the Board organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If not, which language requires clarification?

(4) Would a different format (with respect to the grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

The Board also solicits comment about whether including factual examples in the rule in order to illustrate its terms is appropriate. The Board notes that creating safe harbors in the rule may generate certain problems over time due to changes in technology or business practices. Are there alternatives that the Board should consider to illustrate the terms in the rule?

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 1500

Administrative practice and procedure, Banks, banking, Holding companies

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of Chapter II, Title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.1 is amended by redesignating paragraphs (c)(9) through (c)(13) as paragraphs (c)(11) through (c)(15), respectively, adding and reserving a new paragraph (c)(9), and adding a new paragraph (c)10 to read as follows:

§ 225.1 Authority, purpose, and scope.

* * * * *

(c) * * *

(10) *Subpart J* governs the conduct by financial holding companies of merchant banking investment activities permitted under section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)).

* * * * *

3. A new Subpart J is added to read as follows:

Subpart J—Merchant Banking Investments

Sec.

Subpart J—Merchant Banking Investments

§ 225.170—What investments are permitted under this subpart and who may make them?

(a) *What investments are permitted under this subpart?* Section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) and this subpart authorize a financial holding company, directly or indirectly and as principal or on behalf of one or more persons, to acquire or control any amount of shares, assets or ownership interests of a company or other entity that is engaged in any activity not otherwise authorized for a financial holding company under section 4 of the Bank Holding Company Act. For purposes of this subpart, shares, assets or ownership interests acquired or controlled under this subpart are referred to as ''merchant banking investments.'' A financial holding company may not directly or indirectly acquire or control any merchant banking investment except in compliance with the requirements of this subpart.

(b) *Must the investment be a bona fide merchant banking investment?* The acquisition or control of shares, assets or ownership interests under this subpart is not permitted unless it is part of a bona fide underwriting or merchant or investment banking activity.

(c) *What types of ownership interests may be acquired?* Shares, assets or ownership interests of a company or other entity include any debt or equity security, warrant, option, partnership interest, trust certificate or other instrument representing an ownership interest in the company or entity, whether voting or nonvoting.

(d) *Where in a financial holding company may merchant banking investments be made?* A financial holding company and any subsidiary (other than a depository institution or subsidiary of a depository institution) may acquire or control merchant banking investments. A financial holding company and its subsidiaries may not acquire or control merchant banking investments on behalf of a depository institution or subsidiary of a depository institution.

(e) *May assets other than shares be held directly?* A financial holding company may not under this subpart acquire or control assets, other than shares or other ownership interests in a company, unless:

(1) The assets are held within or promptly transferred to a portfolio company;

(2) The portfolio company maintains policies, books and records, accounts, and other indicia of corporate, partnership or limited liability organization and operation that are separate from the financial holding company and that meet the requirements of § 225.174(a)(4) for limiting the legal liability of the financial holding company; and

(3) The portfolio company has management that is separate from the financial holding company to the extent required by section § 225.171.

(f) *What type of affiliate is required for a financial holding company to make merchant banking investments?* A financial holding company may not acquire or control merchant banking investments under this subpart unless the financial holding company qualifies under at least one of the following paragraphs:

(1) *Securities affiliate.* The financial holding company controls a company that is registered with the Securities and Exchange Commission as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(2) *Insurance affiliate with an investment adviser affiliate.* The financial holding company controls:

(i) An insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance), or providing and issuing annuities; and

(ii) A company that:

(A) Is registered with the Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*); and

(B) provides investment advice to an insurance company.

(g) What do references to a financial holding company include? The term ''financial holding company'' as used in this subpart means the financial holding company and each of its subsidiaries, but, except for §§ 225.171 and 225.174, does not include a depository institution or subsidiary of a depository institution. The term includes any private equity fund controlled by the financial holding company, but does not include any portfolio company controlled by the financial holding company.

(h) *What do references to a depository institution include?* For purposes of this subpart, the term ''depository institution'' includes a U.S. branch or agency of a foreign bank that acquires or controls, or is affiliated with a company that acquires or controls, merchant banking investments under this subpart.

(i) *What is a portfolio company?* A portfolio company is any company or entity:

(1) That is engaged in any activity not authorized for a financial holding company under section 4 of the Bank Holding Company Act; (12 U.S.C. 1843) and

(2) The shares, assets or ownership interests of which are held, owned or controlled directly or indirectly by the financial holding company pursuant to this subpart.

§ 225.171 What are the limitations on managing or operating a portfolio company held as a merchant banking investment?

(a) *May a financial holding company routinely manage or operate a portfolio company?* Except as provided in paragraph (d) of this section, a financial holding company may not routinely manage or operate any portfolio company in which it has a direct or indirect interest and any portfolio company held by any company (including a private equity fund) in which the financial holding company has an ownership interest under this subpart.

(b) *What does it mean to routinely manage or operate a company?* A financial holding company routinely manages or operates a portfolio company if:

(1) Any director, officer, employee or agent of the financial holding company serves as or has the responsibilities of an officer or employee of the portfolio company;

(2) Any officer or employee of the portfolio company is supervised by any director, officer, employee or agent of the financial holding company (other than in that individual's capacity as a director of the portfolio company);

(3) Any covenant or other contractual arrangement exists between the financial holding company and the portfolio company that would restrict the portfolio company's ability to make routine business decisions, such as entering transactions in the ordinary course of business or hiring employees below the rank of the five highest ranking executive officers;

(4) Any director, officer, employee or agent of the financial holding company, whether in the capacity of a director of the portfolio company, adviser to the portfolio company, or otherwise, participates in:

(i) The day-to-day operations of the portfolio company, or

(ii) Management decisions made in the ordinary course of business of the portfolio company other than decisions in which a director of a company customarily participates in that individual's capacity as a director; or (5) Any other arrangement or practice exists by which the financial holding company

routinely manages or operates the portfolio company.

(c) *What arrangements do not involve routinely managing or operating a company?* (1) *Director representation at portfolio companies.* A financial holding company may select any or all of the directors of a portfolio company or have one or more directors, officers, employees or agents serve as directors of a portfolio company if:

(i) The portfolio company employs officers and employees responsible for routinely managing and operating the company; and

(ii) The financial holding company does not routinely manage or operate the portfolio company as described in paragraph (b) of this section.

(2) *Covenants or other provisions regarding extraordinary events.* A financial holding company may, by virtue of covenants or other written agreements with a portfolio company, require the portfolio company to consult with or obtain the approval of the financial holding company to take actions outside of the ordinary course of the business of the portfolio company, including:

(i) The acquisition of control or significant assets of other companies;

(ii) Significant changes to the business plan of the portfolio company;

(iii) The redemption, authorization or issuance of any shares of capital stock (including options, warrants or convertible shares) of the portfolio company; and

(iv) The sale, merger, consolidation, spin-off, recapitalization, liquidation, dissolution or sale of substantially all of the assets of the portfolio company or any of its significant subsidiaries.

(d) *When may a financial holding company manage or operate a portfolio company?* (1) *Special circumstances required.* A financial holding company may routinely manage or operate a portfolio company only:

(i) When intervention is necessary to address a material risk to the value or operation of the portfolio company, such as a significant operating loss or loss of senior management; and

(ii) For the period of time as may be necessary to address the cause of involvement, to obtain suitable alternative management arrangements, to dispose of the investment, or to otherwise obtain a reasonable return upon the resale or disposition of the investment.

(2) *Approval required for extended involvement.* A financial holding company may not routinely manage or operate a portfolio company for a period greater than six months without prior approval of the Board.

(3) *Documentation required.* A financial holding company must maintain and make available to the Board a written record describing its involvement in the management or operation of a portfolio company and the reasons therefor.

(e) *May a depository institution or its subsidiary manage or operate a portfolio company?* (1) *In general.* A depository institution or subsidiary of a depository institution may not under any circumstances manage or operate a portfolio company in which an affiliated company owns or controls an interest under this subpart.

(2) *Exceptions.* Paragraph (e)(1) of this section does not prohibit—

(i) A director, officer or employee of a depository institution or subsidiary of a depository institution from serving as a director of a portfolio company in accordance with the limitations set forth in this section; or

(ii) A financial subsidiary held in accordance with section 5136A of the Revised Statutes (12 U.S.C. 24a) or section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) from taking actions in accordance with the limitations set forth in this section.

§ 225.172 What are the holding periods permitted for merchant banking investments?

(a) *Must investments be made for resale?* A financial holding company may own or control shares, assets and ownership interests pursuant to this subpart only for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the financial holding company's merchant banking investment activities.

(b) *What period of time is generally permitted for holding merchant banking investments?* (1) *In general.* A financial holding company may not, directly or indirectly, own, control or hold any share, asset or ownership interest pursuant to this subpart for a period that exceeds 10 years, except that an investment in or held through a private equity fund may be held for the duration of the fund.

(2) *Ownership interests acquired from or transferred to companies held under this subpart.* For purposes of paragraph (b)(1) of this section, any interest in shares, assets or ownership interests—

(i) Acquired by a financial holding company from a company (including a private equity fund) in which the financial holding company held an interest under this subpart will be considered to have been acquired by the financial holding company on the date that the share, asset or ownership interest was acquired by the company; and

(ii) Acquired by a company (including a private equity fund) from a financial holding company will be considered to have been acquired by the company on the date that the share, asset or ownership interest was acquired by the financial holding company if'

(A) The financial holding company held the share, asset, or ownership interest under this subpart; and

(B) The financial holding company holds an interest in the acquiring company under this subpart.

(3) *Interests previously held by a financial holding company under limited authority.* For purposes of paragraph (b)(1) of this section, any shares, assets, or ownership interests previously owned or controlled, directly or indirectly, by a financial holding company under any other provision of the Federal banking laws that imposes a limited holding period will be considered to have been acquired by the financial holding company under this subpart on the date the financial holding company first acquired ownership or control of the shares, assets or ownership interests under such other provision of law. For purposes of this paragraph (b)(3), a financial holding company includes a depository institution controlled by the financial holding company and any subsidiary of such a depository institution.

(4) *Approval required to hold investments held in excess of applicable time limit.* A financial holding company may, in extraordinary circumstances, seek Board approval to own, control or hold shares, assets or ownership interests of a company under this subpart for a period that exceeds the applicable period specified in paragraph (b)(1) of this section. A request for approval must:

(i) Be submitted to the Board no later than 1 year prior to the expiration of the applicable time period;

(ii) Provide the reasons for the request, including information that addresses the factors in paragraph (b)(5) of this section; and

(iii) Explain the financial holding company's plan for divesting the shares, assets or ownership interests.

(5) *Factors governing Board determinations.* In reviewing any proposal under paragraph (b)(4) of this section, the Board may consider all the facts and circumstances related to the investment, including:

(i) The cost to the financial holding company of disposing of the investment within the applicable period;

(ii) The total exposure of the financial holding company to the company and

the risks that disposing of the investment may pose to the financial holding company;

(iii) Market conditions; and

(iv) The extent and history of involvement by the financial holding company in the management and operations of the company.

(6) *Restrictions applicable to investments held beyond applicable period.* A financial holding company that directly or indirectly owns, controls or holds any share, asset or ownership interest of a company under this subpart for a total period that exceeds the applicable period specified in paragraph (b)(1) of this section must:

(i) Deduct an amount equal to 100 percent of the carrying value of the financial holding company's interest in the share, asset or ownership interest from the Tier 1 capital of the holding company and exclude all unrealized gains on the share, asset or ownership interest from its Tier 2 capital;

(ii) Not enter into any additional transactions, contractual arrangements or other relationships with the company or extend any additional credit to the company without Board approval; and

(iii) Abide by any other restrictions that the Board may impose in connection with granting approval under paragraph (b)(4) of this section.

(c) *What is a private equity fund?* (1) *Definition of a private equity fund.* For purposes of this subpart, a ''private equity fund'' is any company that:

(i) Is formed for the purpose of and is engaged exclusively in the business of investing in shares, assets, and ownership interests of companies for resale or other disposition;

(ii) Is not an operating company;

(iii) Issues equity ownership interests to at least 10 investors that are not affiliated with, and are not officers, directors, employees or principal shareholders of the financial holding company;

(iv) No more than 25 percent of the total equity of which is held, owned or controlled, directly or indirectly, by the financial holding company and its directors, officers, employees and principal shareholders;

(v) That has an initial term of not more than 12 years, which term may be extended for an additional three 1-year periods with the approval of persons holding a majority of the equity of the fund;

(vi) Establishes a plan for the resale or disposition of its investments, and holds, owns or controls investments only for a reasonable period of time consistent with making merchant banking investments;

(vii) Maintains policies on diversification of fund investments; and

(viii) Is not formed or operated for the purpose of making investments inconsistent with the authority granted under section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) or evading the limitations contained in this subpart on merchant banking investments.

(2) *What form may a private equity fund take?* A private equity fund may be a corporation, partnership, limited liability company or other type of company that issues ownership interests in any form.

(3) *May a private equity fund manage a portfolio company?* A private equity fund may not routinely manage or operate a portfolio company except as permitted by this subpart.

§ 225.173 What aggregate limits apply to merchant banking investments?

(a) *In general.* A financial holding company may not, without Board approval, directly or indirectly acquire any additional shares, assets or ownership interests under this subpart or make any additional capital contribution to any company the shares, assets or ownership interests of which are held by it under this subpart if the aggregate carrying value of all merchant banking investments held by the financial holding company under this subpart exceeds:

(1) The lesser of 30 percent of the Tier 1 capital of the company or $6 billion; or

(2) The lesser of 20 percent of the Tier 1 capital of the company or $4 billion excluding interests in private equity funds.

(b) *Do these limits apply to interests held through a private equity fund?* Paragraph (a) of this section does not prohibit any private equity fund that a financial holding company controls from acquiring shares, assets or ownership interests.

§ 225.174 What risk management, reporting and recordkeeping policies are required to make merchant banking investments?

(a) *What internal controls are necessary?* A financial holding company, including a private equity fund controlled by the financial holding company, that makes investments under this subpart must establish and maintain policies, procedures, and systems reasonably designed to:

(1) Monitor and adequately assess the value of each investment, the value of the aggregate portfolio, and the diversification of the portfolio;

(2) Identify and manage the market, credit, concentration and other risks associated with merchant banking investments;

(3) Monitor and review the terms, amounts and types of transactions and relationships between the financial holding company (in the aggregate and separately by affiliate) and each company in which the financial holding company has an interest under this subpart to assess the risks and costs of the transactions and relationships, including whether each transaction or relationship is on market terms, and to assure compliance with any provisions of law, including any applicable fiduciary principles, governing those transactions and relationships;

(4) Ensure the maintenance of corporate separateness between the financial holding company and each company in which the financial holding company has an interest under this subpart, including policies, procedures and systems sufficient to protect the financial holding company and depository institutions controlled by the financial holding company from legal liability for the conduct of operations and for the financial obligations of each such company; and

(5) Ensure compliance with the provisions of this subpart governing merchant banking investments.

(b) *What records must be maintained?* A financial holding company must maintain, at a central location, records and supporting information that:

(1) Are sufficient to enable the Board to review the policies, procedures and systems described in paragraph (a) of this section;

(2) Detail the cost, carrying value, market value, and performance data for each investment made under this subpart, including investments made through private equity funds;

(3) Include copies of the financial statements of any company in which the financial holding company holds an interest under this subpart, including investments made through private equity funds, and any information and valuations provided to any co-investors in such companies;

(4) Document any transaction or relationship between the financial holding company and any company in which the financial holding company holds an interest under this subpart that is not on market terms; and

(5) Document any contingent fee or contingent interest in a private equity fund or relating to any other investment held under this subpart, including the carrying value and market value of such fee or interest and the amount of such fee or interest that has been recognized by the financial holding company as

income but that is contingent on future performance or asset valuations.

(c) *What periodic reports must be filed?* (1) *Annual reports regarding merchant banking investments.* A financial holding company must report annually to the appropriate Reserve Bank in such format and at such time as the Board may prescribe:

(i) For each interest that the financial holding company owns or controls under this subpart (other than an interest in or held through a private equity fund) and that it has owned or controlled for a period that totals longer than five years as of the reporting date:

(A) The identity of the company in which the interest is held, a description of the investment and, if available, a description of the other investors and their interests in the company;

(B) The historical cost of the investment;

(C) The market or other valuation of the investment as of the reporting date; and

(D) The schedule for sale or disposition of the investment;

(ii) For each interest that the financial holding company owns or controls under this subpart, including an interest in or held through a private equity fund, and that it has owned or controlled for a period that totals longer than eight years as of the reporting date:

(A) A detailed explanation of the financial holding company's plan and schedule for the sale or disposition of the investment; and

(B) The information required under paragraph (c)(1)(i) of this section;

(iii) Aggregate data describing the number, total historical cost, total carrying value and total market value for merchant banking investments, segregated by holding period (in 2 year increments), geographic distribution (national or regional, as appropriate), and industrial sector.

(2) *Quarterly reporting for all merchant banking investments.* A financial holding company must, within 60 days of the end of each calendar quarter and in the format prescribed by the Board, submit a report to the appropriate Reserve Bank of the total number, aggregate historical cost and aggregate current valuation of all investments held pursuant to this subpart.

(d) *Is notice required for the acquisition of companies?*

(1) *Fulfillment of statutory notice requirement.* Except as required in paragraph (d)(2) of this section, no post acquisition notice under section 4(k)(6)) of the Bank Holding Company Act (12 U.S.C. 1843(k)(6)) is required by a financial holding company in connection with an investment made under this subpart if the financial holding company has previously filed a notice under § 225.87 indicating that it had commenced activities under this subpart.

(2) *Notice of large individual investments.* A financial holding company must provide written notice to the Board within 30 days after acquiring more than 5 percent of the shares, assets or ownership interests of any company, including a private equity fund, at a total cost that exceeds the lesser of 5 percent of the Tier 1 capital of the company or $200 million.

(3) *Content of notice.* A notice under paragraph (d)(2) of this section must set forth:

(i) The cost of the investment and method for funding the investment;

(ii) The percentage of Tier 1 capital that the investment represents;

(iii) A description of the company and the type of investment; and

(iv) An explanation of the risk management measures to be applied by the financial holding company to the investment.

§ 225.175 How do the statutory cross marketing and section 23A and 23B limitations apply to merchant banking investments?

(a) *Are cross marketing activities prohibited?* (1) *In general.* A depository institution, including a subsidiary of a depository institution, controlled by a financial holding company may not:

(i) Offer or market, directly or through any arrangement, any product or service of any company if more than 5 percent of the company's shares, assets or ownership interests are owned or controlled by the financial holding company pursuant to this subpart; or

(ii) Allow any product or service of the depository institution, including any product or service of a subsidiary of the depository institution, to be offered or marketed, directly or through any arrangement, by or through any company described in paragraph (a)(1)(i) of this section.

(2) *How are financial subsidiaries treated?* For purposes of paragraph (a)(1) of this section, a subsidiary of a depository institution does not include a financial subsidiary held in accordance with section 5136A of the Revised Statutes (12 U.S.C. 24a) or section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w).

(b) *When are companies held under section 4(k)(4)(H) affiliates under sections 23A and 23B?* (1) *Rebuttable presumption of control.* The following rebuttable presumption of control shall apply for purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1): if a financial holding company holds any shares, assets or ownership interests of a company pursuant to this subpart, the company shall be presumed to be an affiliate of any member bank that is affiliated with the financial holding company if such financial holding company, directly or indirectly, owns or controls 15 percent or more of the equity capital of the company.

(2) *Request to rebut presumption.* A financial holding company may rebut this presumption by providing information acceptable to the Board demonstrating that the financial holding company does not control the company.

(3) *Convertible instruments.* For purposes of paragraph (b)(1) of this section, equity capital includes options, warrants and any other instrument convertible into equity capital.

(4) *Application of presumption to private equity funds.* A financial holding company will not be presumed to own or control the equity capital of a company for purposes of paragraph (b)(1) of this section solely by virtue of an investment made by the financial holding company in a private equity fund that owns or controls the equity capital of the company unless the financial holding company controls or has sponsored and advises the private equity fund.

(5) *Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.* Sections 23A and 23B of the Federal Reserve Act shall apply to all covered transactions between each U.S. branch and agency of a foreign bank that acquires or controls, or that is affiliated with a company that acquires or controls, merchant banking investments and—

(i) Any portfolio company that the foreign bank or affiliated company controls or is presumed to control under paragraph (b)(1) of this section; and

(ii) Any company that the foreign bank or affiliated company controls or is presumed to control under paragraph (b)(1) of this section if the company is engaged in acquiring or controlling merchant banking investments.

By order of the Board of Governors of the Federal Reserve System, March 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

Department of the Treasury

12 CFR Chapter XV

Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury adds part 1500 to subchapter

A of chapter XV of Title 12 of the Code of Federal Regulations to read as follows:

PART 1500—MERCHANT BANKING INVESTMENTS

Sec.

Authority: 12 U.S.C. 1843(k)(4)(7).

§ 1500.1—How are terms defined for purposes of this part?

Unless otherwise provided in this part, all terms used in this part have the meanings given such terms in 12 CFR Part 225 (Regulation Y of the Board of Governors of the Federal Reserve System Board).

§ 1500.2—What investments are permitted under this part and who may make them?

(a) *What investments are permitted under this part?* Section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) and this part authorize a financial holding company, directly or indirectly and as principal or on behalf of one or more persons, to acquire or control any amount of shares, assets or ownership interests of a company or other entity that is engaged in any activity not otherwise authorized for a financial holding company under section 4 of the Bank Holding Company Act. For purposes of this part, shares, assets or ownership interests acquired or controlled under this part are referred to as ''merchant banking investments.'' A financial holding company may not directly or indirectly acquire or control any merchant banking investment except in compliance with the requirements of this part.

(b) *Must the investment be a bona fide merchant banking investment?* The acquisition or control of shares, assets or ownership interests under this part is not permitted unless it is part of a bona fide underwriting or merchant or investment banking activity.

(c) *What types of ownership interests may be acquired?* Shares, assets or ownership interests of a company or other entity include any debt or equity security, warrant, option, partnership interest, trust certificate or other instrument representing an ownership interest in the company or entity, whether voting or nonvoting.

(d) *Where in a financial holding company may merchant banking investments be made?* A financial holding company and any subsidiary (other than a depository institution or subsidiary of a depository institution) may acquire or control merchant banking investments. A financial holding company and its subsidiaries may not acquire or control merchant banking investments on behalf of a depository institution or subsidiary of a depository institution.

(e) *May assets other than shares be held directly?* A financial holding company may not under this part acquire or control assets, other than shares or other ownership interests in a company, unless:

(1) The assets are held within or promptly transferred to a portfolio company;

(2) The portfolio company maintains policies, books and records, accounts, and other indicia of corporate, partnership or limited liability organization and operation that are separate from the financial holding company and that meet the requirements of 12 CFR 225.174(a)(4) for limiting the legal liability of the financial holding company; and

(3) The portfolio company has management that is separate from the financial holding company to the extent required by § 1500.3.

(f) *What type of affiliate is required for a financial holding company to make merchant banking investments?* A financial holding company may not acquire or control merchant banking investments under this part unless the financial holding company qualifies under at least one of the following:

(1) *Securities affiliate.* The financial holding company controls a company that is registered with the Securities and Exchange Commission as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(2) *Insurance affiliate with an investment adviser affiliate.* The financial holding company controls:

(i) An insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance), or providing and issuing annuities; and

(ii) A company that:

(A) Is registered with the Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*); and

(B) Provides investment advice to an insurance company.

(g) *What do references to a financial holding company include?* The term ''financial holding company'' as used in this part means the financial holding company and each of its subsidiaries, but, except for § 1500.3, does not include a depository institution or subsidiary of a depository institution. The term includes a private equity fund controlled by the financial holding company, but does not include any portfolio company controlled by the financial holding company.

(h) *What do references to a depository institution include?* For purposes of this part, the term ''depository institution'' includes a U.S. branch or agency of a foreign bank that acquires or controls, or is affiliated with a company that acquires or controls, merchant banking investments under this part.

(i) *What is a portfolio company?* A portfolio company is any company or entity:

(1) That is engaged in any activity not authorized for a financial holding company under section 4 of the Bank Holding Company Act; and

(2) The shares, assets or ownership interests of which are held, owned or controlled directly or indirectly by the financial holding company pursuant to this part.

§ 1500.3 What are the limitations on managing or operating a portfolio company held as a merchant banking investment?

(a) *May a financial holding company routinely manage or operate a portfolio company?* Except as provided in paragraph (d) of this section, a financial holding company may not routinely manage or operate any portfolio company in which it has a direct or indirect interest and any portfolio company held by any company (including a private equity fund) in which the financial holding company has an ownership interest under this part.

(b) *What does it mean to routinely manage or operate a company?* A financial holding company routinely manages or operates a portfolio company if:

(1) Any director, officer, employee or agent of the financial holding company serves as or has the responsibilities of an officer or employee of the portfolio company;

(2) Any officer or employee of the portfolio company is supervised by any

director, officer, employee or agent of the financial holding company (other than in that individual's capacity as a director of the portfolio company);

(3) Any covenant or other contractual arrangement exists between the financial holding company and the portfolio company that would restrict the portfolio company's ability to make routine business decisions, such as entering transactions in the ordinary course of business or hiring employees below the rank of the five highest ranking executive officers;

(4) Any director, officer, employee or agent of the financial holding company, whether in the capacity of a director of the portfolio company, adviser to the portfolio company, or otherwise, participates in:

(i) The day-to-day operations of the portfolio company, or

(ii) Management decisions made in the ordinary course of business of the portfolio company other than decisions in which a director of a company customarily participates in that individual's capacity as a director; or

(5) Any other arrangement or practice exists by which the financial holding company routinely manages or operates the portfolio company.

(c) *What arrangements do not involve routinely managing or operating a company?* (1) *Director representation at portfolio companies.* A financial holding company may select any or all of the directors of a portfolio company or have one or more directors, officers, employees or agents serve as directors of a portfolio company if:

(i) The portfolio company employs officers and employees responsible for routinely managing and operating the company; and

(ii) The financial holding company does not routinely manage or operate the portfolio company as described in paragraph (b) of this section.

(2) *Covenants or other provisions regarding extraordinary events.* A financial holding company may, by virtue of covenants or other written agreements with a portfolio company, require the portfolio company to consult with or obtain the approval of the financial holding company to take actions outside of the ordinary course of the business of the portfolio company, including:

(i) The acquisition of control or significant assets of other companies;

(ii) Significant changes to the business plan of the portfolio company;

(iii) The redemption, authorization or issuance of any shares of capital stock (including options, warrants or convertible shares) of the portfolio company; and

(iv) The sale, merger, consolidation, spin-off, recapitalization, liquidation, dissolution or sale of substantially all of the assets of the portfolio company or any of its significant subsidiaries.

(d) *When may a financial holding company manage or operate a portfolio company?* (1) *Special circumstances required.* A financial holding company may routinely manage or operate a portfolio company only:

(i) When intervention is necessary to address a material risk to the value or operation of the portfolio company, such as a significant operating loss or loss of senior management; and

(ii) For the period of time as may be necessary to address the cause of involvement, to obtain suitable alternative management arrangements, to dispose of the investment, or to otherwise obtain a reasonable return upon the resale or disposition of the investment.

(2) *Approval required for extended involvement.* A financial holding company may not routinely manage or operate a portfolio company for a period greater than six months without prior approval of the Board.

(3) *Documentation required.* A financial holding company must maintain and make available to the Board a written record describing its involvement in the management or operation of a portfolio company and the reasons therefor.

(e) *May a depository institution or its subsidiary manage or operate a portfolio company?* (1) *In general.* A depository institution or subsidiary of a depository institution may not under any circumstances manage or operate a portfolio company in which an affiliated company owns or controls an interest under this part.

(2) *Exceptions.* Paragraph (e)(1) of this section does not prohibit—

(i) A director, officer or employee of a depository institution or subsidiary of a depository institution from serving as a director of a portfolio company in accordance with the limitations set forth in this section; or

(ii) A financial subsidiary held in accordance with section 5136A of the Revised Statutes (12 U.S.C. 24a) or section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) from taking actions in accordance with the limitations set forth in this section.

§ 1500.4 What are the holding periods permitted for merchant banking investments?

(a) *Must investments be made for resale?* A financial holding company may own or control shares, assets and ownership interests pursuant to this part only for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the financial holding company's merchant banking investment activities.

(b) *What period of time is generally permitted for holding merchant banking investments?* (1) *In general.* A financial holding company may not, directly or indirectly, own, control or hold any share, asset or ownership interest pursuant to this part for a period that exceeds 10 years, except that an investment in or held through a private equity fund may be held for the duration of the fund.

(2) *Ownership interests acquired from or transferred to companies held under this part.* For purposes of paragraph (b)(1) of this section, any interest in shares, assets or ownership interests—

(i) Acquired by a financial holding company from a company (including a private equity fund) in which the financial holding company held an interest under this part will be considered to have been acquired by the financial holding company on the date that the share, asset or ownership interest was acquired by the company; and

(ii) Acquired by a company (including a private equity fund) from a financial holding company will be considered to have been acquired by the company on the date that the share, asset or ownership interest was acquired by the financial holding company if—

(A) The financial holding company held the share, asset, or ownership interest under this part; and

(B) The financial holding company holds an interest in the acquiring company under this part.

(3) *Interests previously held by a financial holding company under limited authority.* For purposes of paragraph (b)(1) of this section, any shares, assets, or ownership interests previously owned or controlled, directly or indirectly, by a financial holding company under any other provision of the Federal banking laws that imposes a limited holding period will be considered to have been acquired by the financial holding company under this part on the date the financial holding company first acquired ownership or control of the shares, assets or ownership interests under such other provision of law. For purposes of this paragraph (b)(3), a financial holding company includes a depository institution controlled by the financial holding company and any subsidiary of such a depository institution.

(4) *Approval required to hold investments held in excess of applicable*

time limit. A financial holding company may, in extraordinary circumstances, seek Board approval to own, control or hold shares, assets or ownership interests of a company under this part for a period that exceeds the applicable period specified in paragraph (b)(1) of this section. A request for approval must:

(i) Be submitted to the Board no later than 1 year prior to the expiration of the applicable time period;

(ii) Provide the reasons for the request, including information that addresses the factors in paragraph (b)(5) of this section; and

(iii) Explain the financial holding company's plan for divesting the shares, assets or ownership interests.

(5) *Factors governing Board determinations.* In reviewing any proposal under paragraph (b)(4) of this section, the Board may consider all the facts and circumstances related to the investment, including:

(i) The cost to the financial holding company of disposing of the investment within the applicable period;

(ii) The total exposure of the financial holding company to the company and the risks that disposing of the investment may pose to the financial holding company;

(iii) Market conditions; and

(iv) The extent and history of involvement by the financial holding company in the management and operations of the company.

(6) *Restrictions applicable to investments held beyond applicable period.* A financial holding company that directly or indirectly owns, controls or holds any share, asset or ownership interest of a company under this part for a total period that exceeds the applicable period specified in paragraph (b)(1) of this section must:

(i) Deduct an amount equal to 100 percent of the carrying value of the financial holding company's interest in the share, asset or ownership interest from the Tier 1 capital of the holding company and exclude all unrealized gains on the share, asset or ownership interest from its Tier 2 capital;

(ii) Not enter into any additional transactions, contractual arrangements or other relationships with the company or extend any additional credit to the company without Board approval; and

(iii) Abide by any other restrictions that the Board may impose in connection with granting approval under paragraph (4).

(c) *What is a private equity fund?* (1) *Definition of a private equity fund.* For purposes of this part, a ''private equity fund'' is any company that:

(i) Is formed for the purpose of and is engaged exclusively in the business of investing in shares, assets, and ownership interests of companies for resale or other disposition;

(ii) Is not an operating company;

(iii) Issues equity ownership interests to at least 10 investors that are not affiliated with, and are not officers, directors, employees or principal shareholders of the financial holding company;

(iv) No more than 25 percent of the total equity of which is held, owned or controlled, directly or indirectly, by the financial holding company and its directors, officers, employees and principal shareholders;

(v) That has an initial term of not more than 12 years, which term may be extended for an additional three 1-year periods with the approval of persons holding a majority of the equity of the fund;

(vi) Establishes a plan for the resale or disposition of its investments, and holds, owns or controls investments only for a reasonable period of time consistent with making merchant banking investments;

(vii) Maintains policies on diversification of fund investments; and

(viii) Is not formed or operated for the purpose of making investments inconsistent with the authority granted under section 4(k)(4)(H) of the Bank Holding Company Act or evading the limitations contained in this part on merchant banking investments.

(2) *What form may a private equity fund take?* A private equity fund may be a corporation, partnership, limited liability company or other type of company that issues ownership interests in any form.

(3) *May a private equity fund manage a portfolio company?* A private equity fund may not routinely manage or operate a portfolio company except as permitted by this part.

§ 1500.5 What aggregate limits apply to merchant banking investments?

(a) *In general.* A financial holding company may not, without Board approval, directly or indirectly acquire any additional shares, assets or ownership interests under this part or make any additional capital contribution to any company the shares, assets or ownership interests of which are held by it under this part if the aggregate carrying value of all merchant banking investments held by the financial holding company under this part exceeds:

(1) The lesser of 30 percent of the Tier 1 capital of the company or $6 billion; or

(2) The lesser of 20 percent of the Tier 1 capital of the company or $4 billion excluding interests in private equity funds.

(b) *Do these limits apply to interests held through a private equity fund?* Paragraph (a) of this section does not prohibit any private equity fund that a financial holding company controls from acquiring shares, assets or ownership interests.

§ 1500.6 What risk management, reporting and recordkeeping policies are required to make merchant banking investments?

Certain risk management, reporting and recordkeeping requirements for merchant banking investments are set forth in the Board's Regulation Y, 12 CFR 225.174.

§ 1500.7 How do the statutory cross marketing and sections 23A and 23B limitations apply to merchant banking investments?

Certain cross-marketing limitations and limitations under sections 23A and 23B of the Federal Reserve Act applicable to merchant banking investment are set forth in the Board's Regulation Y, 12 CFR 225.175.

Dated: March 17, 2000.

Gregory A. Baer,

Assistant Secretary for Financial Institutions, Department of the Treasury.

[FR Doc. 00–7147 Filed 3–27–00; 8:45 am]

BILLING CODE 6210–01–U

FEDERAL RESERVE SYSTEM

12 CFR Part 225

Regulation Y; Docket No. R–1067

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System, in consultation with the Secretary of the Treasury, solicits comment on a proposal that would govern the regulatory capital treatment of certain investments in nonfinancial companies by bank holding companies. This proposal would amend the Board's consolidated capital guidelines for bank holding companies to apply a 50 percent capital charge to all investments made, directly or indirectly, by a bank holding company in nonfinancial companies under the merchant banking authority of the Bank Holding Company Act (BHC Act), in nonfinancial companies under the Board's Regulation K, under the Federal Deposit Insurance Act, through small business investment companies (whether controlled by the bank holding company or by a subsidiary depository institution), or under the BHC Act in less than 5 percent of the shares of a nonfinancial company.

This proposal is a supplement to an interim rule (with request for public comment) that governs merchant banking investments made by financial holding companies. That interim rule is published separately and implements provisions of the recently enacted Gramm-Leach-Bliley Act (GLB Act) that permit financial holding companies to make investments in nonfinancial companies as part of a bona fide securities underwriting or merchant or investment banking activity. The capital proposal described below is being published for comment and, unlike the interim rule on merchant banking investments, is not being made effective on an interim basis. During the comment period, the Board and the Secretary will discuss issues raised by this proposal with the other Federal banking agencies and with other appropriate functional regulators.

Comment is invited on all aspects of the proposed rule, and the Board will revise the final rule as appropriate in response to comments received. The Board expects to complete this rulemaking on capital treatment expeditiously.

DATES: Comments must be received on the capital proposal by May 22, 2000.

ADDRESSES: Comments should refer to docket number R–1067 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (or mailed electronically to *regs.comments@federalreserve.gov*). Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Kieran J. Fallon, Senior Counsel (202/452–5270), or Camille M. Caesar, Senior Attorney (202/452–3513), Legal Division; Jean Nellie Liang, Chief, Capital Markets (202/452–2918), Division of Research & Statistics; Michael G. Martinson, Deputy Associate Director (202/452–3640) or James A. Embersit, Manager, Capital Markets (202/452–5249), Division of Banking Supervision and Regulation; Norah M. Barger, Assistant Director, Supervisory Policies and Procedures, Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Users of Telecommunications Device for the Deaf (TDD) *only* contact Janice Simms at (202) 872–4984.

SUPPLEMENTARY INFORMATION:

A. Background

Section 103(a) of the GLB Act (Pub. L. 106–102, 113 Stat. 1338 (1999)) added a new section 4(k)(4)(H) to the BHC Act (12 U.S.C. 1843(k)(4)(H)) that authorizes financial holding companies to acquire or control shares, assets or ownership interests of any nonfinancial company as part of a bona fide underwriting or merchant or investment banking activity (merchant banking investments).

Interviews With Securities Firms and Bank Holding Companies

In order to gather information about how firms currently reserve capital against merchant banking investments, staff of the Federal Reserve System and the Department of the Treasury conducted interviews with a number of securities firms that currently make in merchant banking investments. System staff and Treasury staff also interviewed several bank holding companies that engage in more limited types of investment activities under existing authority. The attached rule reflects information collected in these interviews and the experience of the System staff and Treasury staff in supervising the more limited types of investment activities permissible for bank holding companies.

Securities firms and bank holding companies uniformly indicated that they apply higher internal capital charges against merchant banking investments than are applied to many other types of activities. The industry practice regarding the appropriate internal measures of capital required to support merchant banking activities reflects the greater risks associated with these investments, including the volatility and illiquidity of many investments and the higher leverage often associated with companies in which such investments are made. Firms that make merchant banking investments impose internal capital charges that differ by firm and, in some cases, by type of investment. These capital charges range from 25 percent to 100 percent of the investment. Firms typically record investments initially at the lower of cost or market. Investments may be assigned an adjusted carrying value if a significant event occurs (such as an initial public offering, follow-up financing, or secondary capital raising events), subject to a discount that reflects the size of the firm's holding, the liquidity of the market for the shares held, the volatility of the market and other factors and that is applied prior to recognizing any unrealized gains on the investment.

The proposal reflects industry practices in conducting merchant banking activities. The information about industry practice collected during the interviews is discussed more fully in connection with the interim rule implementing the merchant banking investment authority.

The Board and the Secretary view this capital proposal as a precaution that is necessary to prevent the buildup within banking organizations of excessive risk from merchant banking and other investment activities. In developing this proposal, they have considered the effect of the proposal on the existing activities of bank holding companies.

The Board welcomes comments on all aspects of the proposed rule. These

comments will be carefully considered before promulgation of a final rule.

B. Proposed Rule

As discussed above, many firms that make merchant banking investments and engage in other types of investment activities internally allocate capital to these investments in amounts that are higher than the amounts of capital allocated to most banking assets due to the greater risk, illiquidity and volatility of merchant banking and similar investments and the higher leverage that often is associated with portfolio companies. The internal capital allocation for these investments is generally many multiples of the current regulatory capital charge.

After consideration of the industry practice, the Board, in consultation with the Secretary, is proposing to modify the methods of calculating the risk-weighted and leverage capital ratios for bank holding companies to reflect the risk profiles of these investment activities. The Board is authorized by the BHC Act and other provisions of law to promulgate rules, including capital standards, consistent with the requirements and purposes of the BHC Act and other provisions.

Under the proposal, a bank holding company would be required to deduct from its Tier 1 regulatory capital an amount equal to 50 percent of the total carrying value, as reflected on consolidated financial statements of the bank holding company, of all merchant banking investments held by the bank holding company. The total carrying value of any merchant banking investment subject to this capital deduction is excluded from the bank holding company's assets for purposes of calculating the asset denominator of the risk-based and leverage capital ratios.[1]

The capital charge applies to all investments that would be considered to be equity of the nonfinancial company and all debt instruments that are convertible into equity. It also applies to all debt extended by a bank holding company to a nonfinancial company in which the financial holding company owns 15 percent or more of the total equity. The proposal contains exceptions for short-term secured loans for working capital purposes; for debt if at least 50 percent of the initial principal balance has been syndicated to third parties; for loans that are guaranteed by the United States government; and for extensions of credit by an insured depository institution controlled by the financial holding company that are collateralized in accordance with the requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c) and that meet the other requirements of that section.

The proposal would also apply the same capital treatment to investments held in nonfinancial companies under Regulation K, in less than 5% of the shares of any company under section 4(c)(6) or 4(c)(7) of the BHC Act, through a small business investment company (SBIC) that is controlled by the bank holding company or a subsidiary depository institution, or held by a state bank subsidiary in accordance with section 24 of the Federal Deposit Insurance Act. This capital treatment would not apply to investments that are held in a trading account in accordance with applicable accounting principles and that are part of an underwriting, market making or dealing activity.

The proposal applies this capital treatment to nonfinancial investment activities described above for several reasons. Importantly, the risks associated with these investment activities do not vary according to the authority used to conduct the activity. Thus, similar investment activities should be given the same capital treatment regardless of the source of legal authority to make the investment. Moreover, current regulatory capital treatment, which applies an 8% minimum capital charge to these investments, was developed at a time when the investment activities of banking organizations were relatively small. In recent years, some bank holding companies have greatly expanded the level of their investment activities. The proposal reflects the judgment that it is appropriate at this time, when the investment authority of banking organizations has also been greatly expanded, to revisit and revise regulatory capital treatment for all investment activities.

The Board and the Secretary view this capital proposal as a precaution that is necessary to prevent the development within banking organizations of excessive risk from merchant banking and other investment activities. In developing this proposal, they have considered the effect of the proposal on the existing activities of bank holding companies. The Board and the Secretary also note that the proposed capital treatment is similar to the approach to capital sufficiency that the Federal Deposit Insurance Corporation has adopted under section 24 of the Federal Deposit Insurance Act for investments in subsidiaries that engage in principal activities that are not permissible for a national bank.

As an initial matter, adoption of the capital proposal would not prevent any holding company from becoming or remaining a financial holding company or from taking advantage of the new powers granted under the GLB Act. The capital charge would be applied only at the holding company level on the consolidated organization. Consequently, the capital proposal would not affect the capital levels of any depository institution—which, under the GLB Act, determine whether a company qualifies to be a financial holding company—controlled by a bank holding company.

In addition, the Board and the Secretary have reviewed a sampling of call reports of bank holding companies engaged currently in significant investment activities, including companies that are likely to seek to become financial holding companies. This review indicates that, with virtually no exception, bank holding companies would remain well capitalized on a consolidated basis even after applying the proposed capital charge to all of the investments currently made by these companies. Moreover, nearly all of these companies would be able to increase significantly their level of investment activity and continue to be well capitalized on a consolidated basis after applying the proposed capital charge.

For these reasons, the capital proposal is not expected to have a significant effect on the level of investment activities conducted by bank holding companies. The capital proposal would, however, help to limit the potential harm to bank holding companies and depository institutions controlled by bank holding companies from the risks associated with investment activities.

The capital charge would not be applied to investments made by insurance company subsidiaries of financial holding companies held in accordance with section 4(k)(4)(I) of the BHC Act. The Board expects soon to seek comments on a proposal to de-consolidate functionally regulated insurance underwriting companies from the financial holding company for purposes of applying the Board's

[1] Some investments are booked using ''available for sale'' (AFS) accounting. Under this accounting treatment, unrealized gains are not recognized as net income and flow to a special segregated equity account that is not recognized as Tier 1 capital by the regulatory agencies. Under the current bank holding company rules, 45 percent of the gain on AFS equity securities may be included in Tier 2 capital. This proposal would continue this treatment but further require deduction from Tier 1 capital of 50 percent of the reported cost (or fair value if lower for equity securities) of merchant banking investments recorded as AFS. The reported cost or fair value of these investments would be deducted from risk-weighted and average consolidated assets.

consolidated capital rules. The proposal would take account of the different accounting standards, business practices, and capital and supervisory regimes that apply to insurance underwriting companies.

The Board and the Secretary recognize that the new authority accorded financial holding companies under the GLB Act may raise the possibility of arbitrage between an insurance company and its financial holding company affiliates designed to avoid the capital charges proposed for merchant banking and other investments. The Board and the Secretary seek comment on whether provisions should be included in the final capital rule that would apply to investments made through an insurance company the same capital charge at the holding company level as would be applied to merchant banking and other investments if the Board finds that such arbitrage is occurring within a particular holding company. The Board and the Secretary also invite comment on whether there are other mechanisms that would prevent such arbitrage.

During the period prior to adoption of a final capital rule, financial holding companies that engage in merchant banking activities will be expected to adopt and implement internal capital and accounting policies that reflect the liquidity, market and other risks associated with the company's investment activities. An initial criterion for these internal capital and accounting policies is that they be capable of enabling the financial holding company to meet the terms of the proposed capital rule on its effective date with minimal adjustment and remain in compliance with applicable regulatory capital standards. Moreover, the Board and the Secretary do not intend to encourage behavior that is different than conservative industry practice and expect to monitor capital treatment of merchant banking activities carefully.

Comment is invited on all aspects of the capital charge, including the appropriateness of a separate capital charge for investment activities under different authorities, the amount of the charge, and whether the charge should apply to the exclusions outlined. In particular, comment is invited on how, if at all, the charge differs from the internal capital charges imposed on investment activities by firms that conduct merchant banking and other investment activities. In addition, comment is sought on whether a different approach to the capital treatment would more accurately reserve for the risks of merchant banking and other investment activities. Moreover, comment is invited on the interaction between the capital sufficiency proposal and the investment thresholds for aggregate merchant banking activities discussed in the related interim rule governing merchant banking investments.

Comment also is invited on the manner in which the capital charge is applied to debt extended to portfolio companies in which a financial holding company has made investments. In addition, comment is requested on whether other methods would be more appropriate for assuring that an organization does not use an extension of credit that functions like equity as a means of evading the capital charge.

Comment is requested on whether an exclusion from the proposed capital treatment, or a lesser capital charge, should be established for investments in less than 5 percent of the securities or assets of a nonfinancial company that is publicly held and in which there is a ready market. In addition, the Board seeks comment on whether the proposed capital treatment or a lesser capital charge should apply to merchant banking investments that do not result in a financial holding company's control of the merchant banking investment.

Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this rulemaking. The rule proposes and requests comment on amendments to the Board's consolidated risk-based and Tier 1 leverage capital adequacy guidelines for bank holding companies (Part 225, Appendix A and D). These amendments would establish the regulatory capital requirements applicable to the merchant banking investments of financial holding companies and similar investment activities of bank holding companies. The proposed capital amendments generally would not apply to financial or bank holding companies with consolidated assets of less than $150 million and, thus, are not likely to have a significant economic impact on a substantial number of small entities (*i.e.,* holding companies with less than $100 million in assets). The Board believes the proposed amendments to its capital guidelines are necessary and appropriate to ensure that bank holding companies maintain capital commensurate with the level of risks associated with their activities and that the investment activities of bank holding companies do not pose an undue risk to the safety and soundness of affiliated insured depository institutions.

The Board specifically seeks comment on the likely burden that the proposed rule will impose on bank holding companies.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 App. A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In Appendix A to part 225:

a. In section II.*B.*, a new paragraph (v) is added at the end of the introductory paragraph and a new paragraph 5 is added at the end of section II.B; and

b. In sections III. and IV., footnotes 24 through 57 are redesignated as footnotes 26 through 59.

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

B. * * *

(v) Portfolio investments—deducted from the sum of core capital elements in the manner described below.

* * * * *

5. *Portfolio investments.* a. Fifty percent (50%) of the value of all portfolio investments made by the parent bank holding company or by its direct or indirect subsidiaries must be deducted from the consolidated parent banking organization's core capital components.

b. A portfolio investment is any merchant banking investment made directly or indirectly by the bank holding company pursuant to section 4(k)(4)(H) of the Bank Holding Company (BHC) Act and subpart J of Regulation Y, and any investment made

directly or indirectly by the bank holding company in a nonfinancial company pursuant to section 4(c)(6) or 4(c)(7) of the BHC Act, § 211.5(b)(1)(iii) of the Board's Regulation K, or section 302(b) of the Small Business Investment Act of 1958, or in accordance with section 24 of the Federal Deposit Insurance Act.[24] A nonfinancial company is an entity that engages in any activity that has not been determined to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act.

c. The deduction applies to all merchant banking investments made under section 4(k)(4)(H) of the BHC Act and all investments made in nonfinancial companies under the other authorities listed above, regardless of whether the investment is held by the bank holding company, a depository institution subsidiary of the bank holding company, or a direct or indirect subsidiary of either. For example, a portfolio investment includes any investment in a private equity fund under section 4(k)(4)(H) of the BHC Act, any nonfinancial investment made by a small business investment company (SBIC) subsidiary of the bank holding company, and any nonfinancial investment made by an Edge or Agreement Corporation subsidiary of the holding company under § 211.5(b)(1)(iii) of the Board's Regulation K.

d. For this purpose, an investment includes any equity instrument and any debt instrument with equity features (such as conversion rights, warrants or call options). If the bank holding company owns or controls 15 percent or more of the company's total equity, the term also includes any other debt instrument held by the bank holding company or any subsidiary, except for any short-term, secured extension of credit provided for working capital purposes, any extension of credit by an insured depository institution that is collateralized in accordance with the requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c) and that meets the other requirements of that section; any extension of credit at least 50 percent of which is sold or participated out to unaffiliated persons on the same terms and conditions that applied to the initial credit, and any extension of credit that is guaranteed by the U.S. government.

[24] *See* 12 U.S.C. 1843(c)(6), (c)(7) and (k)(4)(H); 12 CFR 211.5(b)(1)(iii); 15 U.S.C. 682(b); 12 U.S.C. 1831a.

This provision does not apply to investments that are held in the trading account in accordance with applicable accounting principles and that are held as part of an underwriting, market making or dealing activity.

f. For portfolio investments that are reported at cost, under the equity method, or at fair value with unrealized gains (or losses) included in earnings, the deduction is equal to 50 percent of the carrying value of the investment. For available-for-sale portfolio investments reported at fair value with unrealized gains (or losses) included in other comprehensive income, the amount of the deduction is equal to 50 percent of the reported cost of the investment.[25] Any unrealized gains on available-for-sale investments are not to be included in core capital, but may be included in supplementary capital to the extent permitted under section II.A.2.e of this Appendix.

g. For portfolio investments in a company that is consolidated for accounting purposes, the deduction is equal to 50 percent of the parent banking organization's investment in the company as determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the consolidated bank holding company's core capital in accordance with section II.B.1 of this Appendix). The company remains fully consolidated for purposes of determining the banking organization's risk-weighted assets.

h. The value of any portfolio investment subject to the deduction described in this paragraph that is not consolidated for accounting purposes is excluded from the bank holding company's weighted risk assets for purposes of computing the denominator of the company's risk-based capital ratio. For available-for-sale portfolio investments, this exclusion applies to the investment's reported cost or, in the case of equity investments when fair value is less than historical cost, reported fair value.

* * * * *

3. In Appendix D to part 225, in section II.b., footnote 3 is revised and the fourth sentence of section II.b. is revised to read as follows:

[25] For available-for-sale equity investments where fair value is less than historical cost, the amount of the deduction is equal to 50 percent of reported fair value. The unrealized losses on such investments are deducted from core capital in accordance with section II.A.1.a of this Appendix.

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

b. * * *[3] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitations set forth in section II.B.4 of Appendix A of this part; portfolio investments; and other investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from Tier 1 capital.

By order of the Board of Governors of the Federal Reserve System, March 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7148 Filed 3–27–00; 8:45 am]

BILLING CODE 6210–01–U

[3] Tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.) In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of Tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations; and 50 percent of the value of portfolio investments. The Federal Reserve may exclude certain other investments in subsidiaries or associated companies as appropriate.

Federal Register

Tuesday,

March 28, 2000

Part III

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Parts 320, 326 and 331

Final Rule Establishing an Administrative Appeal Process for the Regulatory Program of the Corps of Engineers; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Parts 320, 326, and 331

Final Rule Establishing an Administrative Appeal Process for the Regulatory Program of the Corps of Engineers

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: On July 19, 1995, the Army Corps of Engineers published notice in the **Federal Register** of a proposal to establish an administrative appeal process for the regulatory program of the Department of the Army. The comment period expired on September 5, 1995. The Corps evaluated and addressed the issues raised in comments submitted in response to the proposed rule. In the March 9, 1999, **Federal Register**, the Corps published a final rule establishing an administrative appeal process for permit denials and declined individual permits. Due to budget constraints, the Corps delayed publication of an administrative appeal process for jurisdictional determinations. On September 29, 1999, the President signed the Corps Fiscal Year 2000 appropriations bill which provided funds to administer a one-step appeal process for jurisdictional determinations. The final rule published today establishes a one step administrative appeal process for jurisdictional determinations. In addition, minor changes have been made to clarify the administrative appeal process for permit denials and declined individual permits. These revised regulations contain the complete administrative appeal process for jurisdictional determinations, permit denials, and declined individual permits.

DATES: This rule becomes effective on March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Corps of Engineers Regulatory Branch, (202) 761–0199.

SUPPLEMENTARY INFORMATION:

I. Background

Shortly after coming into office in 1993, the Clinton Administration convened an interagency working group to address concerns with Federal wetlands policy. After hearing from States, tribes, developers, farmers, environmental interests, members of Congress, and scientists, the White House Wetlands Working Group developed a comprehensive, 40-point plan (the Plan) to enhance wetlands protection, while making wetlands regulations more fair, flexible, and effective for everyone, including America's small landowners. The Plan was issued on August 24, 1993. It emphasizes improving Federal wetlands policy through various means, including streamlining wetlands permitting programs. One of several approaches identified in the Plan for achieving such streamlining was the development by the Corps of an administrative appeal process to be implemented after public rulemaking. The Plan discusses an administrative appeal process for Section 404 geographic jurisdictional determinations (JDs) and permit denials. This rule is also contained in the Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions pursuant to Executive Order 12866.

On July 19, 1995, the Corps of Engineers (Corps) published a notice in the **Federal Register** (60 FR 37280) proposing to establish an administrative appeal process for the Department of the Army regulatory program (33 CFR Parts 320–331). The comment period expired on September 5, 1995. The Corps evaluated and addressed the comments submitted in response to the proposed rule. In the March 9, 1999, issue of the **Federal Register** (64 FR 11708), the Corps published a final rule establishing an administrative appeal process for permit denials and declined permits. That rule became effective on August 6, 1999. Due to budget constraints, the Corps delayed the establishment and implementation of an administrative appeal process for JDs. The final rule published today establishes an administrative appeal process for JDs. The administrative appeal process for JDs applies only to geographical JDs that are approved by the Corps of Engineers. In addition, minor edits have been made to clarify the administrative appeal process for permit denials and declined individual permits. That existing process has not been changed by this rule. Published herein is the consolidated 33 CFR Part 331, containing the complete administrative appeal process for JDs, permit denials, and declined individual permits. In Fiscal Years 1995 to 2000 the President's budgets have included money to implement an administrative appeal process for permit denials and JDs. From Fiscal Year (FY) 1995 through FY 1997 the Congressional appropriations for the Department of the Army regulatory program was held level at $101 million. In FY 1998 and FY 1999 Congress appropriated $106 million each year. This funding increase in FY 98 and FY 99 allowed the Corps to finalize regulations to establish and implement an administrative appeal process for permit denials and declined individual permits. In FY 2000 Congress appropriated sufficient funds to implement the administrative appeal process for JDs, that we are finalizing with this consolidated rule, as well as the existing administrative appeal process for permit denials and declined individual permits. The consolidated rule for the administrative appeal process published today provides for the administrative appeal, within the Corps, of an approved JD, a denial with prejudice by the district engineer of a Department of the Army permit application, and/or a declined individual permit (i.e., an individual permit refused by the applicant because of objections to the terms or special conditions of the proffered permit). The appeal process allows administrative appeal of such decisions to the Corps under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act.

The revised rule provides for the addition of an administrative appeal process for JDs. Although some minor editing of the permit denial appeal regulation has been done, the existing process has not been modified. However, we have published 33 CFR Part 331 in its entirety to include the administrative appeal process for approved JDs and to provide a **Federal Register** document that contains the administrative appeal rule in its entirety. The preamble discussion that follows only addresses comments relating to the administrative appeal process for JDs. The comments relating to the administrative appeal process for permit denials and declined individual permits were discussed in the preamble of the final regulation published in the March 9, 1999, **Federal Register** document.

II. Comments on the Proposed Rule

A. General

Comments received on the proposed rule can be summarized under several broad headings: (1) The type of actions reviewed and the extent of the review; (2) the identity and authority of the review officer (RO); (3) the identity and rights of appellants; (4) the finality of JDs; (5) enforcement-related issues; (6) suggested procedural changes and clarifications; and (7) general expressions of both opposition and support of adoption of an administrative

appeal process. The following discussion of comments is divided into these topics and additional comments on specific sections of the regulation are discussed later in the text.

B. Discussion of Specific Comments

(1) Type of Actions Reviewed and Extent of Review

A number of comments were received requesting that the appeal process be expanded to include the assertion of discretionary authority, issuance of cease and desist orders, special conditions, denial without prejudice of a permit application, delays in the evaluation of a permit application, JDs regarding minor incidental discharges associated with excavation and landclearing activities, and the applicability of exemptions and general permits. Those comments were addressed in the March 9, 1999, **Federal Register** document. For the reasons stated in the March 9, 1999, **Federal Register** document, the Corps is not including an administrative appeal process for determining whether or not a particular activity requires a Section 404 and/or Section 10 permit. It should be noted that the biggest concern of applicants and landowners was the geographic extent of waters of the United States on their property (e.g., wetlands delineation).

There were several comments concerning the scope of the review process. Several commenters recommended that the review officer (RO) consider new information, conducting, in effect, a new and independent review. Other commenters indicated that new information should be accepted only if it serves to clarify existing issues and does not raise new issues that were not considered in the Corps original evaluation of the JD and/or the permit application.

After careful consideration, we have decided that the review undertaken by the RO would be limited to the existing administrative record; however, the RO may seek to clarify the record through consultation with the appellant and his agent(s), the district engineer, other Federal and state agency personnel, or other parties, as described in 33 CFR 331.3 and 331.7.

In the revised rule, we are providing an opportunity for a landowner or applicant to request reconsideration of an approved JD by the district engineer if he has new information that may affect the district engineer's decision concerning a particular JD. (See 33 CFR 331.6(c).) It is essential that new information can only be accepted at the district level, so that the district engineer's decision will reflect an accurate and comprehensive analysis of the data compiled in the administrative record. Accepting new information concerning a JD or project during the appeal process would constitute a fundamental change of the administrative record. Such new information might have resulted in a different JD or permit decision had it been presented to the district engineer during the original decision process. Furthermore, allowing an applicant to withhold potentially critical information from the district engineer and submit it during the appeal process might encourage forum-shopping, if an applicant believes that a more favorable decision might be obtained from the division engineer than from the district engineer. Therefore, once a landowner or applicant submits a request for an appeal of an approved JD or permit denial, he cannot submit new information.

(2) The Identity and Authority of the Review Officer (RO)

Comments were received regarding the appropriate person to serve as the RO and the extent of the RO's authority. Most comments were concerned primarily with ensuring the independence and impartiality of the RO, ensuring the fairness of the administrative appeal process, and providing the RO with the authority to change the original decision regarding the appealed decision. Some commenters also recommended authorizing the RO to unilaterally change a district engineer's permit decision.

Some commenters stated that the administrative appeal process should be conducted outside of the Corps of Engineers, *e.g.,* by contracting with private consultants, utilizing administrative law judges, or referring the appeals to another Federal agency. Several commenters expressed strong support for retaining the appeal process within the Corps, while other commenters expressed an equally strong desire to transfer the appeal process to an independent third party in order to promote impartiality, to avoid the perception of bias, and to enhance the credibility of the process. Simplification and lower program costs were also offered by commenters as reasons for transferring the process to the private sector. Efficiency was also cited by several commenters in support of establishing the appeal process as a single level of review at the division level.

We have reviewed and considered these comments in the context of permit denials and declined individual permits, as discussed in the March 9, 1999, **Federal Register** document. Our responses to those comments also apply to the administrative appeal of approved JDs. Further, Congress in the FY 2000 appropriation for the regulatory program required a one step process for the administrative appeal of JDs.

Several commenters expressed the view that the appeal process should grant authority to the division engineer to unilaterally overturn the permit decision of the district engineer. Otherwise, it was argued, the best result an appellant could hope for would be a new, time-consuming review by the same regulatory project manager who made the original permit recommendation to the district engineer. One commenter stated that such a process is inconsistent with the Corps own assertion that an impartial, objective review requires the final permit decision be made at the division rather than district level.

These comments were addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program. The responses published in that **Federal Register** document also apply to the administrative appeal process for approved JDs. For the administrative appeal of JDs, the authority to make the final appeal decision for approved JDs can be delegated to the ROs or other appropriate officials.

Another commenter suggested modifying the third sentence of § 331.3(b)(2) to provide the RO more flexibility. This commenter recommended striking the phrase ''shall not substitute their judgment for that of the Corps district (when reviewing technical issues) unless the reviewed decision was clearly erroneous or omitted a material fact,'' and replacing it with ''shall provide a recommendation on the decision that is supported by clear and convincing evidence.'' This comment was addressed in the March 9, 1999, **Federal Register** document announcing the final rule for the administrative appeal process for the Corps regulatory program.

A comment was received suggesting more involvement by Corps headquarters to ensure consistency of appealed decisions and to facilitate adjustments in policy, if necessary.

This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Several commenters suggested that, because of its unique organizational structure, appeals of decisions made by the New England Division office should be directed to Corps headquarters rather than the division engineer. This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

(3) The Identity and Rights of the Appellant

A number of commenters expressed concerns that the proposed administrative appeal process would unduly restrict who may pursue an appeal, that the scope of participation by the appellant was ill-defined, and that appellants should not be required to exhaust the administrative appeal process before seeking relief in the Federal courts. Several commenters recommended broadening the definition of the term ''affected party'' to include adjacent landowners and the general public. Numerous comments were received regarding third party involvement in the administrative appeal process. A number of commenters favored limiting third party involvement to the extent provided for in the proposed rule. Other commenters requested expansion of third party involvement.

For permit denials and declined individual permits, these comments were addressed in the March 9, 1999, **Federal Register** document.

In response to the question regarding who may pursue an appeal, the Corps has modified the definition of the term ''affected party'' to include the permit applicant, the landowner, or the lease, easement, or option holder. The affected party must have received an approved JD or permit denial, or declined a proffered individual permit. Expanding the administrative appeal process to third parties would potentially increase the number of appealed actions by an order of magnitude or more. This would simply be unworkable.

We do not agree that third parties should be allowed to appeal JDs because JDs are primarily site-specific evaluations of technical criteria, such as tide lines or high water marks, hydric soils, hydrophytic vegetation, wetland hydrology, and interstate commerce connections. Adjacent landowners do not typically have knowledge of, or sufficient interest in, a property to become involved in such determinations. Often an adjacent landowner's interests are related to issues other than effects to aquatic resources. We believe that such interests are best addressed by local land use plans and zoning ordinances rather than by seeking to control potential development by challenging Corps JDs. In addition, broadening the definition of ''affected party'' for JDs to include adjacent landowners and the general public would likely produce a tremendous workload increase for the Corps. The Corps annually conducts approximately 60,000 JDs. Consequently, we have decided not to broaden our definition of ''affected party'' to include adjacent landowners and/or the general public. JDs are not subject to a public interest review or third party participation. JD appeals are limited to parties who have the requisite legal interest in the land that is under jurisdictional review. While the appeals regulation provides for some third party involvement, a few commenters have questioned whether the Corps has provided the appropriate level of public involvement. Consequently, the Corps will evaluate the first year of operation of the appeal process relative to third party involvement and will propose any appropriate modification to ensure effective public involvement in the appeal process.

(4) The Finality of Jurisdictional Determinations

A number of comments urged that approved JDs be recognized as ''final agency actions'' apparently under the view that JDs could thereby be immediately appealed in Federal court. However, even final agency actions must be ''ripe'' before a court can review them. In the past, a number of courts have held that jurisdictional determinations are not ripe for review until a landowner who disagrees with a JD has gone through the permitting process. The Federal Government believes this is the correct result, and nothing in today's rule is intended to alter this position. Ultimately, ripeness is a question that only the reviewing court can answer, and the Agency cannot satisfy ripeness concerns simply by declaring that an agency action is ''final.'' Furthermore, JDs are not necessarily ''final'' even as an administrative matter. Physical circumstances can change over time, and the scope of regulatory jurisdiction when a JD is initially performed might be different from the scope of jurisdiction when a permit application is reviewed or when an enforcement action is taken. Accordingly, we have decided not to address in this rulemaking when a JD should be considered a final agency action.

(5) Enforcement-Related Issues

Many commenters questioned our proposal that, as a general rule, JDs made in the context of an enforcement case should not be administratively appealable under this rule, unless an after-the-fact (ATF) permit application was accepted by the Corps. In the proposed rule published in the July 19, 1995, **Federal Register** notice, the district engineer could accept, in exceptional circumstances, an appeal of a JD associated with an unauthorized activity without accepting an ATF permit application.

In response to these comments, we continue to believe that normally it is not appropriate to provide for appeals of approved JDs associated with unauthorized activities, except when the Corps has accepted an ATF permit application and denied it. However, we recognize that there can be rare cases where the interests of justice, fairness and administrative efficiency would be served by allowing the district engineer to accept an appeal of an approved JD without an ATF permit application. Therefore, we have determined that § 331.11 will be adopted as proposed so that the Corps ability to resolve enforcement actions expeditiously is preserved and so that there is not disparate treatment of JDs embodied in EPA and Corps administrative orders.

One commenter suggested that under the proposed rule the ATF permit process should more appropriately be titled an after-the-fact ''enforcement'' process. This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Several commenters responded to our proposal to amend 33 CFR 326.3(e) to require a tolling agreement as a prerequisite to filing an administrative appeal of an adverse ATF permit decision. Several commenters recommended narrowing the scope of the proposed tolling agreement. As discussed in the March 9, 1999, **Federal Register** document, we determined that it would be appropriate to limit the tolling agreement, and 326.3(e) was amended by adding subparagraph (v). This subparagraph has been revised to include approved JDs.

Sections 326.3(e)(1)(v) and 331.11(c) state that any person alleged to have engaged in an unauthorized activity, who is either allowed to appeal an approved JD or files an ATF permit application that is accepted and processed by the Corps, agrees to a tolling of the Statute of Limitations and must sign an agreement to that effect.

The tolling agreement would state that, in exchange for the Corps accepting the approved JD appeal or ATF permit application, the ATF permit applicant or recipient of an approved JD associated with an unauthorized activity has agreed that the Statute of Limitations would be suspended until one year after the final action has been taken on the approved JD appeal, ATF permit decision, or declined ATF individual permit.

The tolling agreement also applies to any succeeding administrative appeal of an ATF permit denial or declined ATF individual permit. The tolling period would terminate one year after a final decision on (1) the appeal of an approved JD; (2) the appeal of a proffered ATF permit; (3) the denial of an ATF permit application; or, (4) an appeal of such a denial decision, whichever is later. The one year post-decision period is necessary in the event that the United States determines that it would be appropriate to file an action in the Federal courts to obtain a satisfactory remedy for the unauthorized activity.

The tolling agreement would also state that approved JD appellants and permit applicants will not raise a Statute of Limitations defense in any subsequent enforcement action brought by the United States, with respect to the unauthorized activity for the period of time in which the Statute of Limitations is suspended. A separate tolling agreement is required for each unauthorized activity.

One commenter asked that the third sentence in § 331.11 be revised to indicate that the Corps ''receives'' rather than ''may accept'' an after-the-fact permit application, because the commenter believes the Corps could not refuse a permit application. This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Comments were received questioning the basis of the requirement that initial corrective measures must be completed before an appeal could be accepted. One commenter stated that this requirement left an appellant little recourse, a result that appeared to be contrary to the purpose of the rule. Another believed that such a requirement was premature because it presupposes that the appeal lacks merit. These comments were addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

The proposed rule published in the July 19, 1995, **Federal Register** notice, in § 331.11(b), concerned the calculation of potential penalties for unauthorized activities. That provision stated that ''[A]ny penalty imposed, as determined in the appropriate forum by the appropriate decision-maker, may also include in the calculation of penalty the time period involving the appeal process.'' This provision elicited comments stating that it was both ambiguous and potentially unlawful. In the March 9, 1999, **Federal Register** document, we addressed the comments concerning that issue and explained why that provision was omitted from the final rule.

(6) Suggested Procedural Changes and Clarifications for Specific Sections

Section 331.1: We have revised this section to state that approved JDs, in addition to permit denials with prejudice and declined individual permits, are subject to the administrative appeal process. We have also revised paragraph (b) of this section to describe the level of decision maker and removed paragraph (c) from this section.

Section 331.2: In this section, we have modified some definitions and added new definitions. These changes are discussed below.

Affected party: We have modified the definition of this term to include landowners and lease, easement, or option holders as affected parties. An individual who has an identifiable and substantial legal interest in the property is also considered an ''affected party'' for the purposes of this rule. We have also inserted the phrase ''approved JD'' into the definition since the revised rule now includes approved JDs as appealable actions.

Appealable Action: We have inserted the term ''an approved JD'' into the definition of this term since the revised rule now includes approved JDs in the administrative appeal process.

Approved jurisdictional determination: We have added a definition of this term to this section.

Basis of jurisdictional determination: We added a definition of this term to § 331.2 since the revised rule now includes approved JDs as appealable actions.

Declined permit: We have inserted the word ''special'' before the word ''conditions'' throughout the definition of this term to clarify that general conditions required by Corps regulations are not appealable. Also, special conditions added to an individual permit are usually the reason why proffered individual permits are declined by applicants.

Jurisdictional determination (JD): We have added a definition of this term to § 331.2 since the revised rule now includes approved JDs as appealable actions.

Several commenters said that it was not clear that ''jurisdictional determinations'' includes ''wetland delineation.'' We have modified the language in the introductory comments in the preamble and the language in the rule to clarify that wetland delineations and wetland delineation verifications are jurisdictional determinations. We believe the definition of the term ''jurisdictional determination'' now clearly includes both the finding of Corps regulatory jurisdiction (*i.e.* a determination of the presence of waters of the United States on a parcel of land) and the delineation of boundaries of waters of the United States, including wetlands, on a parcel of land.

Several commenters noted that some sections of the proposed rule referred to the ''current Federal manual for identifying and delineating wetlands'' and the 1987 *Corps of Engineers Wetlands Delineation Manual* as if they were the same.

We acknowledge that this can be confusing. We have changed language in the introductory comments in the preamble and language in the rule to clarify that the 1987 *Corps of Engineers Wetlands Delineation Manual* is the currently accepted Federal manual for identifying and delineating wetlands. Recognizing that a new Federal wetland delineation manual or additional guidance or criteria may be developed in the future, all references within the rule to a delineation manual are made generically as ''the current regulatory criteria for identifying and delineating wetlands'' to minimize the impact to this rule in the event of adoption of a new manual. We have also inserted the phrase ''and associated guidance'' to refer to the guidance that was issued by the Corps in 1992 to clarify the use of the 1987 *Corps of Engineers Wetlands Delineation Manual* and address any potential future guidance that may be issued for a new Federal wetland delineation manual.

Notification of Appeal Process (NAP): We have modified the definition of this term by inserting the phrase ''approved JD'' into the list of actions that are subject to the administrative appeal process.

Preliminary JDs: We have added a definition of this term to this section.

Proffered Permit: We added a definition of this term to § 331.2 to clarify this term to distinguish the

initial proffered permit which is not appealable from the second proffered permit which is an appealable action.

Request for Appeal (RFA): We have modified the definition of this term by inserting the phrase ''approved JD'' into the list of actions that are subject to the administrative appeal process. We have also added the phrase ''* * * to allow the RO to conduct field tests or sampling for purposes directly related to the appeal * * *'' to the end of the third sentence to clarify the reasons necessary for the right of entry.

Tolling agreement: We have added a definition of this term to this section.

Section 331.3(a): One commenter suggested including ''prompt'' with ''fair, reasonable, and effective'' in describing the administrative appeal process to emphasize the Corps commitment to timely action on appeals.

This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Section 331.3(a)(2): One commenter suggested including the phrase ''based on the merits of the appeal'' in the first sentence.

This comment was addressed in the March 9, 1999, **Federal Register** document announcing the final rule for the administrative appeal process for the Corps regulatory program.

Section 331.4: Several commenters noted that the proposed rule did not contain a list of items that must be present in the administrative record that would be the subject of an administrative appeal.

These comments were addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program. We have added a sentence to this section stating that, for approved JDs, the notification must include an NAP fact sheet, an RFA form, and a basis for JD.

Section 331.5: This section has been revised to include approved JDs as appealable actions. In § 331.5(a)(2) we have added ''incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands'' as a reason for appeal. We have also revised § 331.5(b) by adding three more actions that are not appealable. These actions are: approved JDs associated with an individual permit where the permit has been accepted and signed by the permittee, preliminary JDs, and previously approved JDs that have been superceded by another approved JD.

Section 331.5(b)(1): One commenter suggested that it may not be clear to permit applicants that endorsement of a proffered individual permit indicates acceptance of the permit in its entirety, and effects a waiver of the applicant's right to appeal the terms and special conditions of the permit. This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Section 331.6: One commenter suggested that we change the rule so that the RFA must be filed within 60 days of the date that the applicant receives the NAP, rather than within 60 days of the date of the NAP. One commenter suggested that it would be difficult for appellants to provide their reasons for requesting an appeal within 60 days unless the Corps provides a rationale as part of the JD or permit denial notification. Another commenter requested that information concerning JDs and permit decisions be made available to the public.

For permit denials and declined individual permits, these comments were addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program. We have modified and expanded § 331.4 to clarify that for JDs, the affected party will be sent a ''basis of JD'' summarizing the information used by the Corps to make the approved JD.

One commenter suggested modifying the sentence addressing ''right of entry'' in § 331.6 of the proposed rule published in the July 19, 1995, **Federal Register** notice to specify that any field tests or sampling by the RO be ''for purposes directly related to the appeal.'' In the final rule published in the March 9, 1999, **Federal Register** document, we had moved this provision from § 331.6 and added it to the definition of ''request for appeal'' in § 331.2. In the revised rule published today, we have added ''to allow the RO to clarify elements of the record or to conduct field test or sampling for purposes directly related to the appeal'' to the end of the third sentence of that definition.

We have modified this section to include approved JDs as appealable actions. We have also added a sentence to § 331.6(e) to require a recipient of a general permit authorization or individual permit to complete the appeal process prior to commencing work in waters of the United States on the project site, if he does not accept the approved JD associated with that general permit authorization or individual permit or the special conditions of the proffered individual permit.

Section 331.7: We have revised this section to include approved JDs as appealable actions.

One commenter asked what the status of a permit application would be during the time an appeal of the JD for the project site is being considered. We acknowledge that there are no provisions addressing this situation in the rule. We understand this concern and are planning to issue guidance to the districts which will allow them flexibility to take appropriate action on individual applications. The district engineer can either continue or suspend the evaluation of the permit application until the appeal is resolved, depending on case-specific considerations. For instance, it may be in the interest of the applicant to continue evaluation of the permit application if the applicant is appealing the geographic limits of waters of the United States or if the applicant needs to comply with other laws which involve extended periods of review, such as consultation under Section 7 of the Endangered Species Act. However, in cases where the Corps must respond to a request for authorization within a specific time period (*e.g.,* the 30-day preconstruction notification period for certain nationwide permit activities), the district engineer should consider the PCN to be incomplete until the administrative appeal process for the approved JD has been completed. If the appeal concerns the issue of jurisdiction, it may be appropriate to suspend permit evaluation until the appeal is resolved, since a subsequent determination of ''no jurisdiction'' would obviate the need to continue the permit evaluation process. Due to the multitude of factors that must be considered for this issue, we have decided not to modify the rule to address this issue, but retain flexibility in the regulation and provide guidance to Corps districts concurrent with implementation of this rule.

Section 331.7(c) (Proposed § 331.8(a)): A number of commenters recommended that we allow division ROs to conduct site visits on appeals of JDs. The JD appeal process proposed in the July 19, 1995, **Federal Register** notice was a two level process, with the first level appeal to the district office that conducted the original JD. The second level appeal would have been to the division office. The district RO would have been allowed to conduct site visits, but not the division RO. In the interests of fairness to appellants, program efficiency, and cost effectiveness, we

have modified the JD appeal process to a one level appeal to the division engineer. Consequently, the division RO will conduct site visits, if necessary, for the purpose of clarifying the administrative record.

Another commenter indicated that we should be required to obtain the landowner's permission before conducting a site inspection and that the landowner and his consultants be allowed to attend.

We believe that if a landowner wishes to request a review of a JD, he must make the site available to the district regulatory staff because a site visit is, under most circumstances, essential to adequately review a particular JD. The RFA is conditioned to grant the Corps right of entry to the project site. Section 331.7(c) requires the RO to notify the appellant and the appellant's authorized agents at least 15 days prior to the site investigation, to provide the appellant and his authorized agents the opportunity to attend the site investigation.

We received many comments concerning the deadlines proposed for appeals of approved JDs. Only one commenter strongly opposed the proposed deadlines; that commenter wanted all decisions reached within 120 days. Most of the commenters acknowledged that there may be seasonal constraints involved in making wetland determinations, unique site conditions, or other circumstances that may affect the timeliness of such decisions. One commenter wanted even greater flexibility than the proposed 12 month time period when there are extenuating circumstances, but another commenter was concerned that Corps districts may request an extension of time due to a ''wet'' season to gain additional time and delay their decisions. Two commenters suggested we follow the same time deadlines as NRCS.

After considering these comments and our proposed deadlines, we believe the time periods are reasonable, and we have retained them in the final rule. We will monitor the JD appeals program and if significant delays are occurring, we will revisit this issue. We have also added text to this section that explains how extenuating circumstances concerning site visits, such as seasonal hydrology, winter weather, or disturbed site conditions, should be addressed.

Section 331.7(d) (Proposed as § 331.7(d)(1)): Several commenters requested clarification of the purpose, location, and notification requirements for the approved JD appeal meeting. These comments, sometimes contradictory, suggested that the meetings should be: (1) informal; (2) more structured; (3) limited to clarification of the administrative record; (4) open to the oral presentation of the appellant's case; and (5) limited to the district staff asking questions rather than providing an opportunity to discuss settlement. One commenter suggested that approved JD appeal meetings should be held in the Corps office.

The language of this section has been modified to clarify that these meetings will be scheduled by the RO to review and discuss issues directly related to the approved JD under appeal. Additionally, we have revised this section to state that that the approved JD meeting should be held at a location of reasonable convenience to the appellant and near the parcel subject to the approved JD, since the site may be a considerable distance from the Corps office. Consequently, we anticipate that the RO may have to travel frequently and have included this factor in our estimate of the cost of the appeal process.

Section 331.7(e)(1) (Formerly § 331.7(d)(1)): Several commenters suggested that the RO should be required to notify the appellant a minimum number of days prior to the date of the appeal conference to ensure that the appellant has sufficient time to schedule and attend the meeting.

We addressed this comment in the March 9, 1999, **Federal Register** document announcing the final rule for the administrative appeal process for the Corps regulatory program.

One commenter suggested that it be made mandatory that complete transcripts be prepared for all presentations and discussions occurring during the appeal conference.

This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Section 331.7(f) (Formerly § 331.7(e)): One commenter suggested that the RO be allowed to communicate with both the appellant and the Corps district during the appeal process. Another commenter concurred with our initial proposal to prohibit any conversations between the RO and the parties to the appeal, and also suggested that the regulation should explicitly prohibit any conversations regarding the appeal between the RO and any third party.

We addressed these comments in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program. Those responses also apply to the administrative appeal process for approved JDs.

Section 331.7(g) (Formerly § 331.7(f)): We have revised this section to include approved JDs.

Section 331.10: We have made a few minor revisions to this section to clarify that this section applies to Corps permit decisions and not to approved JDs.

In § 331.10(a), we have clarified that the final letter to the applicant will include the original permit denial or proffered permit.

In § 331.10(b), the fourth sentence has been revised by adding the phrase ''permit decisions'' to clarify that the requirements listed in that sentence apply only to permit denials or declined individual permits.

One commenter observed that this section was silent with respect to the roles of the EPA and the NRCS in final agency decisions regarding JDs. This commenter argued that JDs are not only the responsibility of the Corps and that the appeals process should address other authorities in this regard. This rule is promulgated under authority of the Corps of Engineers and thus addresses only Corps approved jurisdictional determinations. Whether or not appeals are available for jurisdictional determinations by other agencies and the process for such appeals lies within the respective authorities of NRCS and EPA. Thus, this rule does not provide for appeal of such jurisdictional determinations, and nothing in this rule is intended to alter or abridge the authority of any other federal agency with respect to jurisdictional determinations for which they are responsible. To further clarify this issue the definition for ''Approved Jurisdictional Determination'' provides that such JDs, which are the only JDs that can be appealed, are ''Corps'' determinations.

Section 331.11: We have revised this section to include approved JDs associated with permit denials and declined individual permits attendant with after-the-fact permit applications. We have also adopted the language in the July 19, 1995, proposed regulation indicating that normally approved JDs associated with unauthorized activities are not appealable except where an after the fact permit application has been accepted by the Corps and denied, unless the Corps determines that extraordinary circumstances warranted such an appeal.

In the last sentence of § 331.11(c), we have also replaced the word ''written'' with ''signed'' to clarify that a signed tolling agreement must be submitted to the district engineer before an after-the-fact permit application or an

administrative appeal associated with an unauthorized activity will be accepted by the district engineer.

Section 331.12: We have revised the last sentence of this section to clarify that this section only applies to permit denials or proffered permits.

(7) General Expressions of Opposition and Support

A number of comments addressed the estimated costs of administering the proposed administrative appeal process. One commenter indicated that our estimated costs were too low. Two commenters said that our estimated costs were too high.

We addressed these comments in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

III. Application of Rule to Prior Regulatory Decisions

Affected parties may appeal approved JDs for those determinations occurring on or after March 28, 2000. Such requests will be accepted for administrative appeal in accordance with this regulation. Approved JDs completed prior to the publication date of the final regulation will not be accepted under the appeal process. During the initial implementation period of these regulations, the RO may delay the processing an RFA for up to 60 days after March 28, 2000.

One commenter asked whether the availability of an administrative appeal process would affect in-process litigation, initiated in response to a permit denied with prejudice after the date of the publication of the final rule in the **Federal Register**. That comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

IV. Environmental Documentation

We have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, because the Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act (NEPA) is not required for the revision of this rule. Furthermore, JDs do not authorize an applicant or landowner to conduct work in waters of the United States if a Section 404 and/or Section 10 permit is required. JDs only describe presence and extent of waters of the United States based on standard technical criteria. Therefore, environmental documentation under the NEPA is not required for these actions. Moreover, this regulation for administrative appeal only establishes a one-level review for approved JDs, denied permits and declined individual permits, as needed to ensure that applicable regulations, policies, practices, and procedures, including the preparation of appropriate environmental documentation, have been appropriately followed.

V. Executive Order 12291 and the Regulatory Flexibility Act

We do not believe that this revision of the final rule meets the definition of a major rule under Executive Order 12291, and therefore we do not believe that a regulatory impact analysis is required. The revised final rule should reduce the burden on the public by offering an administrative appeal process for certain Corps decisions, and, in many instances, should allow the applicant to avoid the more time-consuming and costly alternative of challenging a Corps permit decision in the Federal courts.

We also do not believe that this revision of the final rule will have a significant impact on a substantial number of small entities pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, because the revised final rule only creates an optional review of jurisdictional determinations through an administrative appeal process. The final rule should be less time consuming and less costly to permit applicants who want to appeal a decision with which they disagree, but prior to March 9, 1999, could only seek to have the decision reviewed through the Federal courts. In addition, this rule establishes an opportunity for affected parties to appeal approved JDs, which was not available in the past. Furthermore, since the administrative appeal process is optional (*i.e.*, at the applicant's or landowner's discretion), we have minimized the potential of any increased regulatory burden on small entities. If an applicant or landowner chooses to forego an appeal, the net effect of the final rule would be zero.

Note: The term ''he'' and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 320

Administrative practice and procedure, Dams, Environmental protection, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

33 CFR Part 326

Administrative practice and procedure, Intergovernmental relations, Investigations, Law enforcement, Navigation (water), Penalties, Water pollution control, Waterways.

33 CFR Part 331

Administrative practice and procedure, Environmental protection, Navigation (water), Water pollution control, Waterways.

Dated: March 22, 2000.

Joseph W. Westphal,

Assistant Secretary of the Army (Civil Works), Department of the Army.

Accordingly, 33 CFR, Chapter II is amended as follows:

PART 320—GENERAL REGULATORY POLICIES

1. The authority citation for Part 320 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Amend § 320.1 by revising the last five sentences of paragraph (a)(2) to read as follows:

§ 320.1 Purpose and scope.

(a) * * *

(2) * * * A district engineer's decision on an approved jurisdictional determination, a permit denial, or a declined individual permit is subject to an administrative appeal by the affected party in accordance with the procedures and authorities contained in 33 CFR Part 331. Such administrative appeal must meet the criteria in 33 CFR 331.5; otherwise, no administrative appeal of that decision is allowed. The terms ''approved jurisdictional determination,'' ''permit denial,'' and ''declined permit'' are defined at 33 CFR 331.2. There shall be no administrative appeal of any issued individual permit that an applicant has accepted, unless the authorized work has not started in waters of the United States, and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7 (see 33 CFR 331.5(b)(1)). An affected party must exhaust any administrative appeal available pursuant to 33 CFR Part 331 and receive a final Corps decision on the appealed action prior to filing a lawsuit in the Federal courts (see 33 CFR 331.12).

* * * * *

PART 326—ENFORCEMENT

3. The authority citation for Part 326 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2101.

4. Amend § 326.3 to revise paragraph (e)(1)(v) to read as follows:

§ 326.3 Unauthorized activities.

* * * * *

(e) * * *

(1) * * *

(v) No appeal of an approved jurisdictional determination (JD) associated with an unauthorized activity or after-the-fact permit application will be accepted unless and until the applicant has furnished a signed statute of limitations tolling agreement to the district engineer. A separate statute of limitations tolling agreement will be prepared for each unauthorized activity. Any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact permit, where the application is accepted and evaluated by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that application is suspended until one year after the final Corps decision, as defined at 33 CFR 331.10. Moreover, the recipient of an approved JD associated with an unauthorized activity or an application for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal. Such agreement will state that, in exchange for the Corps acceptance of any after-the-fact permit application and/or any administrative appeal associated with the unauthorized activity, the responsible party agrees that the statute of limitations will be suspended (i.e., tolled) until one year after the final Corps decision on the after-the-fact permit application or, if there is an administrative appeal, one year after the final Corps decision as defined at 33 CFR 331.10, whichever date is later.

* * * * *

5. Revise part 331 to read as follows:

PART 331—ADMINISTRATIVE APPEAL PROCESS

Sec.

Authority: 33 U.S.C. 401 *et seq.*, 1344, 1413.

§ 331.1 Purpose and policy.

(a) *General.* The purpose of this Part is to establish policies and procedures to be used for the administrative appeal of approved jurisdictional determinations (JDs), permit applications denied with prejudice, and declined permits. The appeal process will allow the affected party to pursue an administrative appeal of certain Corps of Engineers decisions with which they disagree. The basis for an appeal and the specific policies and procedures of the appeal process are described in the following sections. It shall be the policy of the Corps of Engineers to promote and maintain an administrative appeal process that is independent, objective, fair, prompt, and efficient.

(b) *Level of decision maker.* Appealable actions decided by a division engineer or higher authority may be appealed to an Army official at least one level higher than the decision maker. This higher Army official shall make the decision on the merits of the appeal, and may appoint a qualified individual to act as a review officer (as defined in § 331.2). References to the division engineer in this Part shall be understood as also referring to a higher level Army official when such official is conducting an administrative appeal.

§ 331.2 Definitions.

The terms and definitions contained in 33 CFR Parts 320 through 330 are applicable to this part. In addition, the following terms are defined for the purposes of this part:

Affected party means a permit applicant, landowner, a lease, easement or option holder (*i.e.*, an individual who has an identifiable and substantial legal interest in the property) who has received an approved JD, permit denial, or has declined a proffered individual permit.

Agent(s) means the affected party's business partner, attorney, consultant, engineer, planner, or any individual with legal authority to represent the appellant's interests.

Appealable action means an approved JD, a permit denial, or a declined permit, as these terms are defined in this section.

Appellant means an affected party who has filed an appeal of an approved JD, a permit denial or declined permit under the criteria and procedures of this part.

Approved jurisdictional determination means a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. Approved JDs are clearly designated appealable actions and will include a basis of JD with the document.

Basis of Jurisdictional determination is a summary of the indicators that support the Corps approved JD. Indicators supporting the Corps approved JD can include, but are not limited to: indicators of wetland hydrology, hydric soils, and hydrophytic plant communities; indicators of ordinary high water marks, high tide lines, or mean high water marks; indicators of adjacency to navigable or interstate waters; indicators that the wetland or waterbody is of part of a tributary system; or indicators of linkages between isolated water bodies and interstate or foreign commerce.

Declined permit means a proffered individual permit, including a letter of permission, that an applicant has refused to accept, because he has objections to the terms and special conditions therein. A declined permit can also be an individual permit that the applicant originally accepted, but where such permit was subsequently modified by the district engineer, pursuant to 33 CFR 325.7, in such a manner that the resulting permit contains terms and special conditions that lead the applicant to decline the modified permit, provided that the applicant has not started work in waters of the United States authorized by such permit. Where an applicant declines a permit (either initial or modified), the applicant does not have a valid permit to conduct regulated activities in waters of the United States, and must not begin construction of the work requiring a Corps permit unless and until the applicant receives and accepts a valid Corps permit.

Denial determination means a letter from the district engineer detailing the reasons a permit was denied with prejudice. The decision document for

the project will be attached to the denial determination in all cases.

Jurisdictional determination (JD) means a written Corps determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344) or a written determination that a waterbody is subject to regulatory jurisdiction under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*). Additionally, the term includes a written reverification of expired JDs and a written reverification of JDs where new information has become available that may affect the previously written determination. For example, such geographic JDs may include, but are not limited to, one or more of the following determinations: the presence or absence of wetlands; the location(s) of the wetland boundary, ordinary high water mark, mean high water mark, and/or high tide line; interstate commerce nexus for isolated waters; and adjacency of wetlands to other waters of the United States. All JDs will be in writing and will be identified as either preliminary or approved. JDs do not include determinations that a particular activity requires a DA permit.

Notification of Appeal Process (NAP) means a fact sheet that explains the criteria and procedures of the administrative appeal process. Every approved JD, permit denial, and every proffered individual permit returned for reconsideration after review by the district engineer in accordance with § 331.6(b) will have an NAP form attached.

Notification of Applicant Options (NAO) means a fact sheet explaining an applicant's options with a proffered individual permit under the administrative appeal process.

Permit denial means a written denial with prejudice (see 33 CFR 320.4(j)) of an individual permit application as defined in 33 CFR 325.5(b).

Preliminary JDs are written indications that there may be waters of the United States on a parcel or indications of the approximate location(s) of waters of the United States on a parcel. Preliminary JDs are advisory in nature and may not be appealed. Preliminary JDs include compliance orders that have an implicit JD, but no approved JD.

Proffered permit means a permit that is sent to an applicant that is in the proper format for the applicant to sign (for a standard permit) or accept (for a letter of permission). The term ''initial proffered permit'' as used in this part refers to the first time a permit is sent to the applicant. The initial proffered permit is not an appealable action. However, the applicant may object to the terms or conditions of the initial proffered permit and, if so, a second reconsidered permit will be sent to the applicant. The term ''proffered permit'' as used in this part refers to the second permit that is sent to the applicant. Such proffered permit is an appealable action.

Request for appeal (RFA) means the affected party's official request to initiate the appeal process. The RFA must include the name of the affected party, the Corps file number of the approved JD, denied permit, or declined permit, the reason(s) for the appeal, and any supporting data and information. No new information may be submitted. A grant of right of entry for the Corps to the project site is a condition of the RFA to allow the RO to clarify elements of the record or to conduct field tests or sampling for purposes directly related to the appeal. A standard RFA form will be provided to the affected party with the NAP form. For appeals of decisions related to unauthorized activities a signed tolling agreement, as required by 33 CFR 326.3(e)(1)(v), must be included with the RFA, unless a signed tolling agreement has previously been furnished to the Corps district office. The affected party initiates the administrative appeal process by providing an acceptable RFA to the appropriate Corps of Engineers division office. An acceptable RFA contains all the required information and provides reasons for appeal that meets the criteria identified in § 331.5.

Review officer (RO) means the Corps official responsible for assisting the division engineer or higher authority responsible for rendering the final decision on the merits of an appeal.

Tolling agreement refers to a document signed by any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact (ATF) permit, where the application is accepted and evaluated by the Corps. The agreement states that the affected party agrees to have the statute of limitations regarding any violation associated with that approved JD or application ''tolled'' or temporarily set aside until one year after the final Corps decision, as defined at § 331.10. No ATF permit application or administrative appeal associated with an unauthorized activity will be accepted until a tolling agreement is furnished to the district engineer.

§ 331.3 Review officer.

(a) *Authority.* (1) The division engineer has the authority and responsibility for administering a fair, reasonable, prompt, and effective administrative appeal process. The division engineer may act as the review officer (RO), or may delegate, either generically or on a case-by-case basis, any authority or responsibility described in this part as that of the RO. With the exception of JDs, as described in this paragraph (a)(1), the division engineer may not delegate any authority or responsibility described in this part as that of the division engineer. For approved JDs only, the division engineer may delegate any authority or responsibility described in this part as that of the division engineer, including the final appeal decision. In such cases, any delegated authority must be granted to an official that is at the same or higher grade level than the grade level of the official that signed the approved JD. Regardless of any delegation of authority or responsibility for ROs or for final appeal decisions for approved JDs, the division engineer retains overall responsibility for the administrative appeal process.

(2) The RO will assist the division engineer in reaching and documenting the division engineer's decision on the merits of an appeal, if the division engineer has delegated this responsibility as explained in paragraph (a)(1) of this section. The division engineer has the authority to make the final decision on the merits of the appeal. Neither the RO nor the division engineer has the authority to make a final decision to issue or deny any particular permit nor to make an approved JD, pursuant to the administrative appeal process established by this part. The authority to issue or deny permits remains with the district engineer. However, the division engineer may exercise the authority at 33 CFR 325.8(c) to elevate any permit application, and subsequently make the final permit decision. In such a case, any appeal process of the district engineer's initial decision is terminated. If a particular permit application is elevated to the division engineer pursuant to 33 CFR 325.8(c), and the division engineer's decision on the permit application is a permit denial or results in a declined permit, that permit denial or declined permit would be subject to an administrative appeal to the Chief of Engineers.

(3) *Qualifications.* The RO will be a Corps employee with extensive knowledge of the Corps regulatory program. Where the permit decision being appealed was made by the division engineer or higher authority, a Corps official at least one level higher than the decision maker shall make the decision on the merits of the RFA, and

this Corps official shall appoint a qualified individual as the RO to conduct the appeal process.

(b) *General*—(1) *Independence.* The RO will not perform, or have been involved with, the preparation, review, or decision making of the action being appealed. The RO will be independent and impartial in reviewing any appeal, and when assisting the division engineer to make a decision on the merits of the appeal.

(2) *Review.* The RO will conduct an independent review of the administrative record to address the reasons for the appeal cited by the applicant in the RFA. In addition, to the extent that it is practicable and feasible, the RO will also conduct an independent review of the administrative record to verify that the record provides an adequate and reasonable basis supporting the district engineer's decision, that facts or analysis essential to the district engineer's decision have not been omitted from the administrative record, and that all relevant requirements of law, regulations, and officially promulgated Corps policy guidance have been satisfied. Should the RO require expert advice regarding any subject, he may seek such advice from any employee of the Corps or of another Federal or state agency, or from any recognized expert, so long as that person had not been previously involved in the action under review.

§ 331.4 Notification of appealable actions.

Affected parties will be notified in writing of a Corps decision on those activities that are eligible for an appeal. For approved JDs, the notification must include an NAP fact sheet, an RFA form, and a basis of JD. For permit denials, the notification must include a copy of the decision document for the permit application, an NAP fact sheet and an RFA form. For proffered individual permits, when the initial proffered permit is sent to the applicant, the notification must include an NAO fact sheet. For declined permits (i.e., proffered individual permits that the applicant refuses to accept and sends back to the Corps), the notification must include an NAP fact sheet and an RFA form. Additionally, an affected party has the right to obtain a copy of the administrative record.

§ 331.5 Criteria.

(a) *Criteria for appeal*—(1) *Submission of RFA.* The appellant must submit a completed RFA (as defined at § 331.2) to the appropriate division office in order to appeal an approved JD, a permit denial, or a declined permit. An individual permit that has been signed by the applicant, and subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, may be appealed under this process, provided that the applicant has not started work in waters of the United States authorized by the permit. The RFA must be received by the division engineer within 60 days of the date of the NAP.

(2) *Reasons for appeal.* The reason(s) for requesting an appeal of an approved JD, a permit denial, or a declined permit must be specifically stated in the RFA and must be more than a simple request for appeal because the affected party did not like the approved JD, permit decision, or the permit conditions. Examples of reasons for appeals include, but are not limited to, the following: A procedural error; an incorrect application of law, regulation or officially promulgated policy; omission of material fact; incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands; incorrect application of the Section 404(b)(1) Guidelines (see 40 CFR Part 230); or use of incorrect data. The reasons for appealing a permit denial or a declined permit may include jurisdiction issues, whether or not a previous approved JD was appealed.

(b) *Actions not appealable.* An action or decision is not subject to an administrative appeal under this part if it falls into one or more of the following categories:

(1) An individual permit decision (including a letter of permission or a standard permit with special conditions), where the permit has been accepted and signed by the permittee. By signing the permit, the applicant waives all rights to appeal the terms and conditions of the permit, unless the authorized work has not started in waters of the United States and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7;

(2) Any site-specific matter that has been the subject of a final decision of the Federal courts;

(3) A final Corps decision that has resulted from additional analysis and evaluation, as directed by a final appeal decision;

(4) A permit denial without prejudice or a declined permit, where the controlling factor cannot be changed by the Corps decision maker (*e.g.,* the requirements of a binding statute, regulation, state Section 401 water quality certification, state coastal zone management disapproval, *etc.* (See 33 CFR 320.4(j));

(5) A permit denial case where the applicant has subsequently modified the proposed project, because this would constitute an amended application that would require a new public interest review, rather than an appeal of the existing record and decision;

(6) Any request for the appeal of an approved JD, a denied permit, or a declined permit where the RFA has not been received by the division engineer within 60 days of the date of the NAP;

(7) A previously approved JD that has been superceded by another approved JD based on new information or data submitted by the applicant. The new approved JD is an appealable action;

(8) An approved JD associated with an individual permit where the permit has been accepted and signed by the permittee;

(9) A preliminary JD; or

(10) A JD associated with unauthorized activities except as provided in § 331.11.

§ 331.6 Filing an appeal.

(a) An affected party appealing an approved JD, permit denial or declined permit must submit an RFA that is received by the division engineer within 60 days of the date of the NAP. Flow charts illustrating the appeal process are in the Appendices of this part.

(b) In the case where an applicant objects to an initial proffered individual permit, the appeal process proceeds as follows. To initiate the appeal process regarding the terms and special conditions of the permit, the applicant must write a letter to the district engineer explaining his objections to the permit. The district engineer, upon evaluation of the applicant's objections, may: Modify the permit to address all of the applicant's objections or modify the permit to address some, but not all, of the applicant's objections, or not modify the permit, having determined that the permit should be issued as previously written. In the event that the district engineer agrees to modify the initial proffered individual permit to address all of the applicant's objections, the district engineer will proffer such modified permit to the applicant, enclosing an NAP fact sheet and an RFA form as well. Should the district engineer modify the initial proffered individual permit to address some, but not all, of the applicant's objections, the district engineer will proffer such modified permit to the applicant, enclosing an NAP fact sheet, RFA form, and a copy of the decision document for the project. If the district engineer does not modify the initial proffered individual permit, the district engineer will proffer the unmodified permit to

the applicant a second time, enclosing an NAP fact sheet, an RFA form, and a copy of the decision document. If the applicant still has objections, after receiving the second proffered permit (modified or unmodified), the applicant may decline such proffered permit; this declined permit may be appealed to the division engineer upon submittal of a complete RFA form. The completed RFA must be received by the division engineer within 60 days of the NAP. A flow chart of an applicant's options for an initial proffered individual permit is shown in Appendix B of this part. A flow chart of the appeal process for a permit denial or a declined permit (*i.e.*, a proffered permit declined after the Corps decision on the applicant's objections to the initial proffered permit) is shown in Appendix A of this part. A flow chart of the appeal process for an approved jurisdictional determination is shown in Appendix C of this part. A flow chart of the process for when an unacceptable request for appeal is returned to an applicant is shown in Appendix D of this part.

(c) An approved JD will be reconsidered by the district engineer if the affected party submits new information or data to the district engineer within 60 days of the date of the NAP. (An RFA that contains new information will either be returned to the district engineer for reconsideration or the appeal will be processed if the applicant withdraws the new information.) The district engineer has 60 days from the receipt of such new information or data to review the new information or data, consider whether or not that information changes the previously approved JD, and, reissue the approved JD or issue a new approved JD. The reconsideration of an approved JD by the district engineer does not commence the administrative appeal process. The affected party may appeal the district engineer's reissued or new approved JD.

(d) The district engineer may not delegate his signature authority to deny the permit with prejudice or to return an individual permit to the applicant with unresolved objections. The district engineer may delegate signature authority for JDs, including approved JDs.

(e) Affected parties may appeal approved JDs where the determination was dated after March 28, 2000, but may not appeal approved JDs dated on or before March 28, 2000. The Corps will begin processing JD appeals no later than May 30, 2000. All appeals must meet the criteria set forth in § 331.5. If work is authorized by either general or individual permit, and the affected party wishes to request an appeal of the JD associated with the general permit authorization or individual permit or the special conditions of the proffered individual permit, the appeal must be received by the Corps and the appeal process concluded prior to the commencement of any work in waters of the United States and prior to any work that could alter the hydrology of waters of the United States.

§ 331.7 Review procedures.

(a) *General.* The administrative appeal process for approved JDs, permit denials, and declined permits is a one level appeal, normally to the division engineer. The appeal process will normally be conducted by the RO. The RO will document the appeal process, and assist the division engineer in making a decision on the merits of the appeal. The division engineer may participate in the appeal process as the division engineer deems appropriate. The division engineer will make the decision on the merits of the appeal, and provide any instructions, as appropriate, to the district engineer.

(b) *Requests for the appeal of approved JDs, permit denials, or declined permits.* Upon receipt of an RFA, the RO shall review the RFA to determine whether the RFA is acceptable (*i.e.*, complete and meets the criteria for appeal). If the RFA is acceptable, the RO will so notify the appellant in writing within 30 days of the receipt of the acceptable RFA. If the RO determines that the RFA is not complete the RO will so notify the appellant in writing within 30 days of the receipt of the RFA detailing the reason(s) why the RFA is not complete. If the RO believes that the RFA does not meet the criteria for appeal (see § 331.5), the RO will make a recommendation on the RFA to the division engineer. If the division engineer determines that the RFA is not acceptable, the division engineer will notify the appellant of this determination by a certified letter detailing the reason(s) why the appeal failed to meet the criteria for appeal. No further administrative appeal is available, unless the appellant revises the RFA to correct the deficiencies noted in the division engineer's letter or the RO's letter. The revised RFA must be received by the division engineer within 30 days of the date of the Corps letter indicating that the initial RFA is not acceptable. If the RO determines that the revised RFA is still not complete, the RO will again so notify the appellant in writing within 30 days of the receipt of the RFA detailing the reason(s) why the RFA is not complete. If the division engineer determines that the revised RFA is still not acceptable, the division engineer will notify the appellant of this determination by a certified letter within 30 days of the date of the receipt of the revised RFA, and will advise the appellant that the matter is not eligible for appeal. No further RFAs will be accepted after this point.

(c) *Site investigations.* Within 30 days of receipt of an acceptable RFA, the RO should determine if a site investigation is needed to clarify the administrative record. The RO should normally conduct any such site investigation within 60 days of receipt of an acceptable RFA. The RO may also conduct a site investigation at the request of the appellant, provided the RO has determined that such an investigation would be of benefit in interpreting the administrative record. The appellant and the appellant's authorized agent(s) must be provided an opportunity to participate in any site investigation, and will be given 15 days notice of any site investigation. The RO will attempt to schedule any site investigation at the earliest practicable time acceptable to both the RO and the appellant. The RO, the appellant, the appellant's agent(s) and the Corps district staff are authorized participants at any site investigation. The RO may also invite any other party the RO has determined to be appropriate, such as any technical experts consulted by the Corps. For permit denials and declined permit appeals, any site investigation should be scheduled in conjunction with the appeal review conference, where practicable. If extenuating circumstances occur at the site that preclude the appellant and/or the RO from conducting any required site visit within 60 days, the RO may extend the time period for review. Examples of extenuating circumstances may include seasonal hydrologic conditions, winter weather, or disturbed site conditions. The site visit must be conducted as soon as practicable as allowed by the extenuating circumstances, however, in no case shall any site visit extend the total appeals process beyond twelve months from the date of receipt of the RFA. If any site visit delay is necessary, the RO will notify the appellant in writing.

(d) *Approved JD appeal meeting.* The RO may schedule an informal meeting moderated by the RO or conference call with the appellant, his authorized agent, or both, and appropriate Corps regulatory personnel to review and discuss issues directly related to the appeal for the purpose of clarifying the administrative record. If a meeting is held, the appellant will bear his own

costs associated with necessary arrangements, exhibits, travel, and representatives. The approved JD appeal meeting should be held at a location of reasonable convenience to the appellant and near the site where the approved JD was conducted.

(e) *Permit denials and declined permits appeal conference.* Conferences held in accordance with this part will be informal, and will be chaired by the RO. The purpose of the appeal conference is to provide a forum that allows the participants to discuss freely all relevant issues and material facts associated with the appeal. An appeal conference will be held for every appeal of a permit denial or a declined permit, unless the RO and the appellant mutually agree to forego a conference. The conference will take place within 60 days of receipt of an acceptable RFA, unless the RO determines that unforeseen or unusual circumstances require scheduling the conference for a later date. The purpose of the conference will be to allow the appellant and the Corps district representatives to discuss supporting data and information on issues previously identified in the administrative record, and to allow the RO the opportunity to clarify elements of the administrative record. Presentations by the appellant and the Corps district representatives may include interpretation, clarification, or explanation of the legal, policy, and factual bases for their positions. The conference will be governed by the following guidelines:

(1) *Notification.* The RO will set a date, time, and location for the conference. The RO will notify the appellant and the Corps district office in writing within 30 days of receipt of the RFA, and not less than 15 days before the date of the conference.

(2) *Facilities.* The conference will be held at a location that has suitable facilities and that is reasonably convenient to the appellant, preferably in the proximity of the project site. Public facilities available at no expense are preferred. If a free facility is not available, the Corps will pay the cost for the facility.

(3) *Participants.* The RO, the appellant, the appellant's agent(s) and the Corps district staff are authorized participants in the conference. The RO may also invite any other party the RO has determined to be appropriate, such as any technical experts consulted by the Corps, adjacent property owners or Federal or state agency personnel to clarify elements of the administrative record. The division engineer and/or the district engineer may attend the conference at their discretion. If the appellant or his authorized agent(s) fail to attend the appeal conference, the appeal process is terminated, unless the RO excuses the appellant for a justifiable reason. Furthermore, should the process be terminated in such a manner, the district engineer's original decision on the appealed action will be sustained.

(4) *The role of the RO.* The RO shall be in charge of conducting the conference. The RO shall open the conference with a summary of the policies and procedures for conducting the conference. The RO will conduct a fair and impartial conference, hear and fully consider all relevant issues and facts, and seek clarification of any issues of the administrative record, as needed, to allow the division engineer to make a final determination on the merits of the appeal. The RO will also be responsible for documenting the appeal conference.

(5) *Appellant rights.* The appellant, and/or the appellant's authorized agent(s), will be given a reasonable opportunity to present the appellant's views regarding the subject permit denial or declined permit.

(6) *Subject matter.* The purpose of the appeal conference will be to discuss the reasons for appeal contained in the RFA. Any material in the administrative record may be discussed during the conference, but the discussion should be focused on relevant issues needed to address the reasons for appeal contained in the RFA. The RO may question the appellant or the Corps representatives with respect to interpretation of particular issues in the record, or otherwise to clarify elements of the administrative record. Issues not identified in the administrative record by the date of the NAP for the application may not be raised or discussed, because substantive new information or project modifications would be treated as a new permit application (see § 331.5(b)(5)).

(7) *Documentation of the appeal conference.* The appeal conference is an informal proceeding, intended to provide clarifications and explanations of the administrative record for the RO and the division engineer; it is not intended to supplement the administrative record. Consequently, the proceedings of the conference will not be recorded verbatim by the Corps or any other party attending the conference, and no verbatim transcripts of the conference will be made. However, after the conference, the RO will write a memorandum for the record (MFR) summarizing the presentations made at the conference, and will provide a copy of that MFR to the division engineer, the appellant, and the district engineer.

(8) *Appellant costs.* The appellant will be responsible for his own expenses for attending the appeal conference.

(f) *Basis of decision and communication with the RO.* The appeal of an approved JD, a permit denial, or a declined permit is limited to the information contained in the administrative record by the date of the NAP for the application or approved JD, the proceedings of the appeal conference, and any relevant information gathered by the RO as described in § 331.5. Neither the appellant nor the Corps may present new information not already contained in the administrative record, but both parties may interpret, clarify or explain issues and information contained in the record.

(g) *Applicability of appeal decisions.* Because a decision to determine geographic jurisdiction, deny a permit, or condition a permit depends on the facts, circumstances, and physical conditions particular to the specific project and/or site being evaluated, appeal decisions would be of little or no precedential utility. Therefore, an appeal decision of the division engineer is applicable only to the instant appeal, and has no other precedential effect. Such a decision may not be cited in any other administrative appeal, and may not be used as precedent for the evaluation of any other jurisdictional determination or permit application. While administrative appeal decisions lack precedential value and may not be cited by an appellant or a district engineer in any other appeal proceeding, the Corps goal is to have the Corps regulatory program operate as consistently as possible, particularly with respect to interpretations of law, regulation, an Executive Order, and officially-promulgated policy. Therefore, a copy of each appeal decision will be forwarded to Corps Headquarters; those decisions will be periodically reviewed at the headquarters level for consistency with law, Executive Orders, and policy. Additional official guidance will be issued as necessary to maintain or improve the consistency of the Corps' appellate and permit decisions.

§ 331.8 Timeframes for final appeal decisions.

The Division Engineer will make a final decision on the merits of the appeal at the earliest practicable time, in accordance with the following time limits. The administrative appeal process is initiated by the receipt of an RFA by the division engineer. The

Corps will review the RFA to determine whether the RFA is acceptable. The Corps will notify the appellant accordingly within 30 days of the receipt of the RFA in accordance with § 331.7(b). If the Corps determines that the RFA is acceptable, the RO will immediately request the administrative record from the district engineer. The division engineer will normally make a final decision on the merits of the appeal within 90 days of the receipt of an acceptable RFA unless any site visit is delayed pursuant to § 331.7(c). In such case, the RO will complete the appeal review and the division engineer will make a final appeal decision within 30 days of the site visit. In no case will a site visit delay extend the total appeal process beyond twelve months from the date of receipt of an acceptable RFA.

§ 331.9 Final appeal decision.

(a) In accordance with the authorities contained in § 331.3(a), the division engineer will make a decision on the merits of the appeal. While reviewing an appeal and reaching a decision on the merits of an appeal, the division engineer can consult with or seek information from any person, including the district engineer.

(b) The division engineer will disapprove the entirety of or any part of the district engineer's decision only if he determines that the decision on some relevant matter was arbitrary, capricious, an abuse of discretion, not supported by substantial evidence in the administrative record, or plainly contrary to a requirement of law, regulation, an Executive Order, or officially promulgated Corps policy guidance. The division engineer will not attempt to substitute his judgment for that of the district engineer regarding a matter of fact, so long as the district engineer's determination was supported by substantial evidence in the administrative record, or regarding any other matter if the district engineer's determination was reasonable and within the zone of discretion delegated to the district engineer by Corps regulations. The division engineer may instruct the district engineer on how to correct any procedural error that was prejudicial to the appellant (i.e., that was not a ''harmless'' procedural error), or to reconsider the decision where any essential part of the district engineer's decision was not supported by accurate or sufficient information, or analysis, in the administrative record. The division engineer will document his decision on the merits of the appeal in writing, and provide a copy of this decision to the applicant (using certified mail) and the district engineer.

(c) The final decision of the division engineer on the merits of the appeal will conclude the administrative appeal process, and this decision will be filed in the administrative record for the project.

§ 331.10 Final Corps decision.

The final Corps decision on a permit application is the initial decision to issue or deny a permit, unless the applicant submits an RFA, and the division engineer accepts the RFA, pursuant to this Part. The final Corps decision on an appealed action is as follows:

(a) If the division engineer determines that the appeal is without merit, the final Corps decision is the district engineer's letter advising the applicant that the division engineer has decided that the appeal is without merit, confirming the district engineer's initial decision, and sending the permit denial or the proffered permit for signature to the appellant; or

(b) If the division engineer determines that the appeal has merit, the final Corps decision is the district engineer's decision made pursuant to the division engineer's remand of the appealed action. The division engineer will remand the decision to the district engineer with specific instructions to review the administrative record, and to further analyze or evaluate specific issues. If the district engineer determines that the effects of the district engineer's reconsideration of the administrative record would be narrow in scope and impact, the district engineer must provide notification only to those parties who commented or participated in the original review, and would allow 15 days for the submission of supplemental comments. For permit decisions, where the district engineer determines that the effect of the district engineer's reconsideration of the administrative record would be substantial in scope and impact, the district engineer's review process will include issuance of a new public notice, and/or preparation of a supplemental environmental analysis and decision document (see 33 CFR 325.7). Subsequently, the district engineer's decision made pursuant to the division engineer's remand of the appealed action becomes the final Corps permit decision. Nothing in this part precludes the agencies' authorities pursuant to Section 404(q) of the Clean Water Act.

§ 331.11 Unauthorized activities.

Approved JDs, permit denials, and declined permits associated with after-the-fact permit applications are appealable actions for the purposes of this part. If the Corps accepts an after-the-fact permit application, an administrative appeal of an approved JD, permit denial, or declined permit may be filed and processed in accordance with these regulations subject to the provisions of paragraphs (a), (b), and (c) of this section. An appeal of an approved JD associated with unauthorized activities will normally not be accepted unless the Corps accepts an after-the-fact permit application. However, in rare cases, the district engineer may accept an appeal of such an approved JD, if the district engineer determines that the interests of justice, fairness, and administrative efficiency would be served thereby. Furthermore, no such appeal will be accepted if the unauthorized activity is the subject of a referral to the Department of Justice or the EPA, or for which the EPA has the lead enforcement authority or has requested lead enforcement authority.

(a) *Initial corrective measures.* If the district engineer determines that initial corrective measures are necessary pursuant to 33 CFR 326.3(d), an RFA for an appealable action will not be accepted by the Corps, until the initial corrective measures have been completed to the satisfaction of the district engineer.

(b) *Penalties.* If an affected party requests, under this Section, an administrative appeal of an appealable action prior to the resolution of the unauthorized activity, and the division engineer determines that the appeal has no merit, the responsible party remains subject to any civil, criminal, and administrative penalties as provided by law.

(c) *Tolling of statute of limitations.* Any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact permit, where the application is accepted and processed by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that approved JD or application is tolled until one year after the final Corps decision, as defined at § 331.10. Moreover, the recipient of an approved JD associated with an unauthorized activity or applicant for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal (See 33 CFR 326.3(e)(1)(v)). No administrative appeal associated with an unauthorized activity or after-the-fact permit application will be accepted until such signed tolling

agreement is furnished to the district engineer.

§ 331.12 Exhaustion of administrative remedies.

No affected party may file a legal action in the Federal courts based on a permit denial or a proffered permit until after a final Corps decision has been made and the appellant has exhausted all applicable administrative remedies under this part. The appellant is considered to have exhausted all administrative remedies when a final Corps permit decision is made in accordance with § 331.10.

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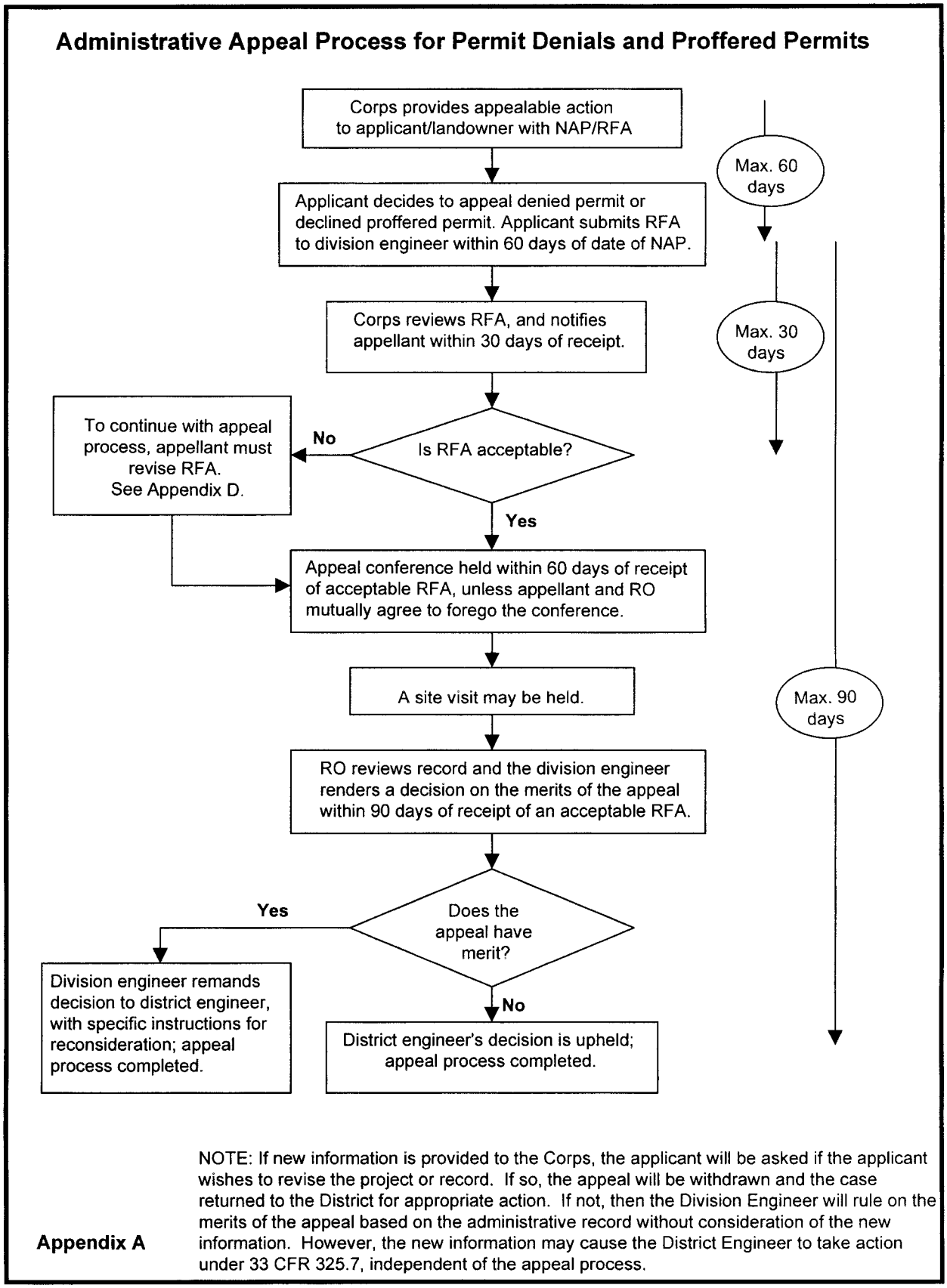
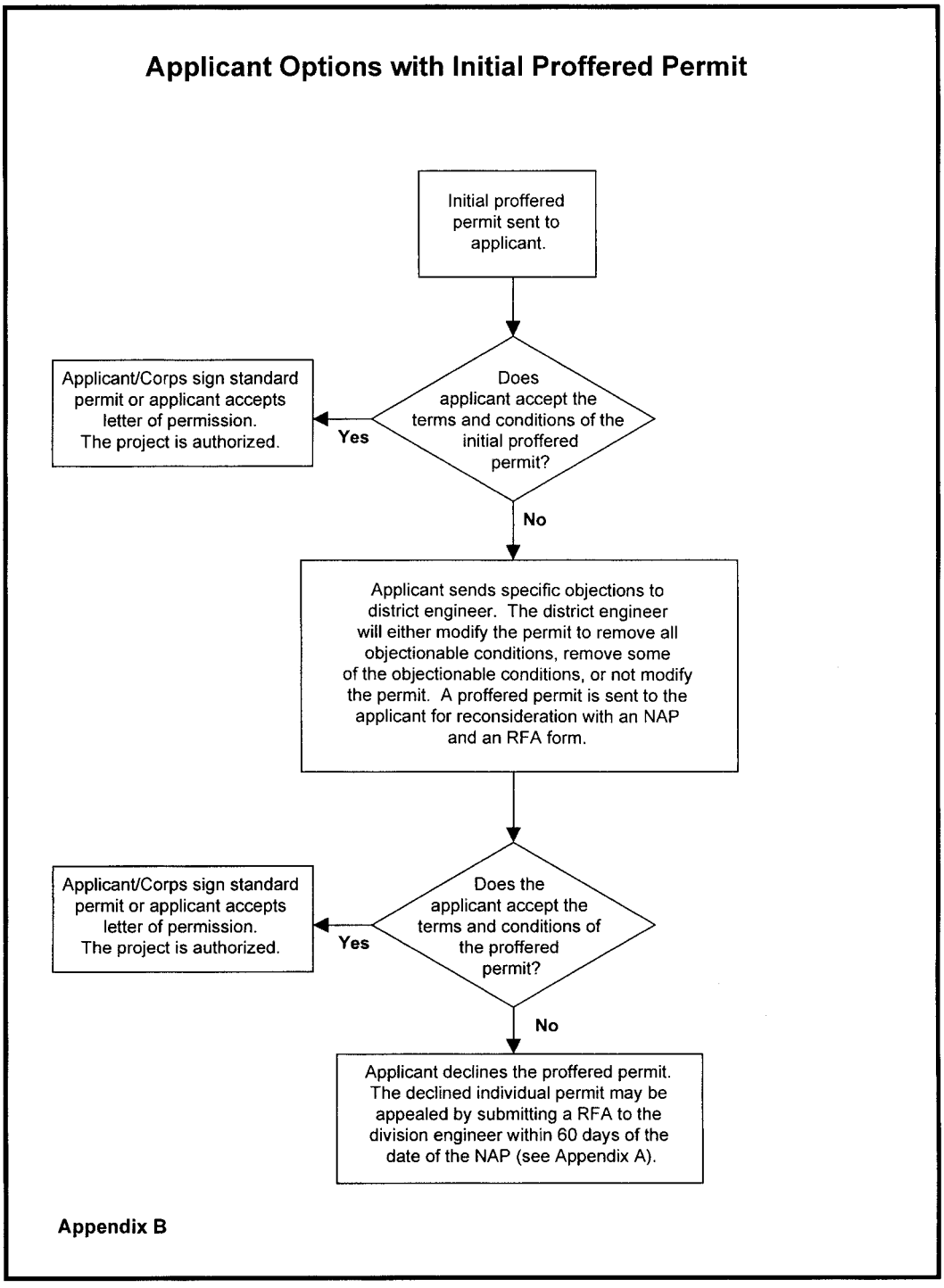
Appendix A to Part 331—Administrative Appeal Process for Permit Denials and Proffered Permits



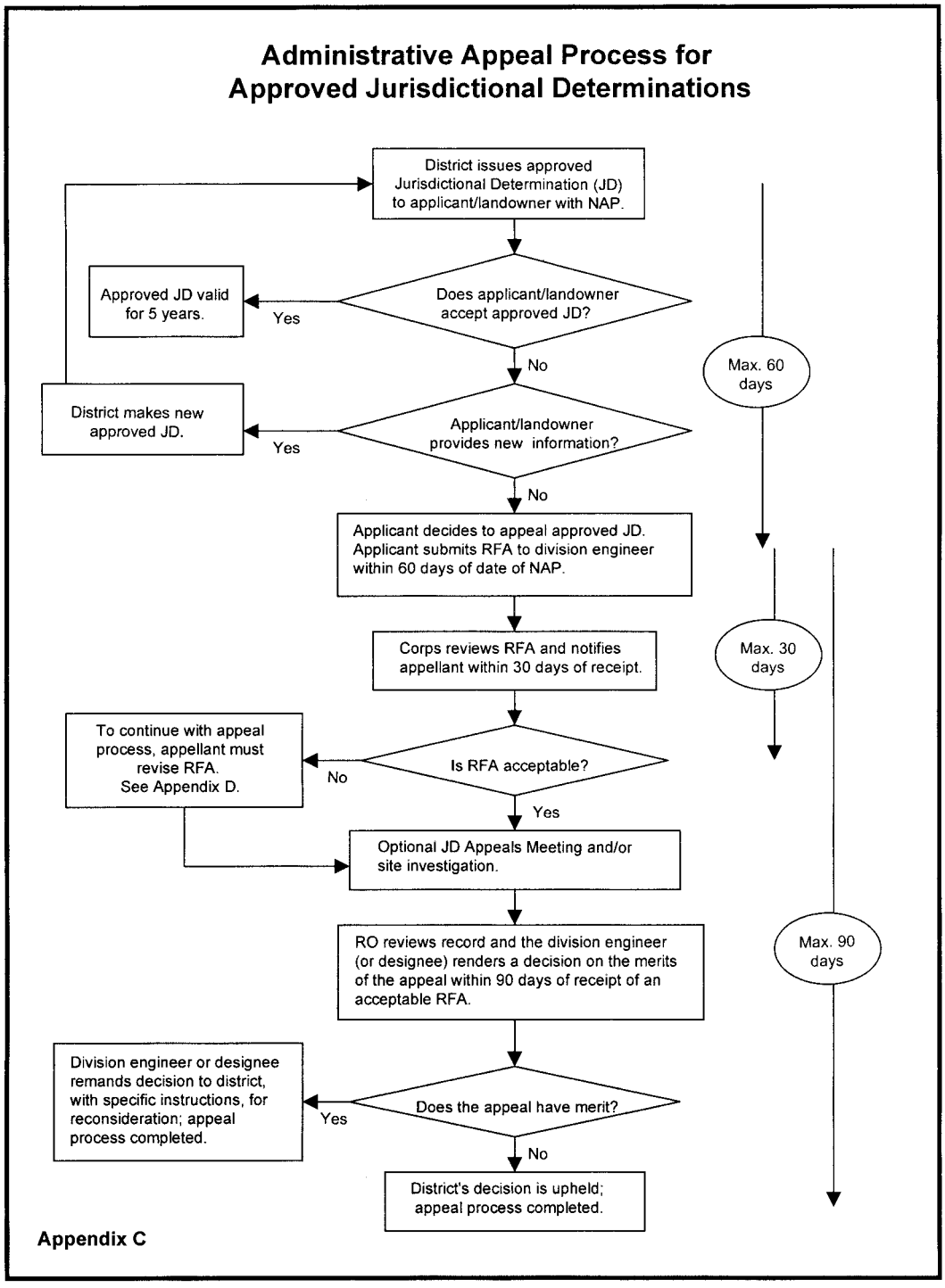
NOTE: If new information is provided to the Corps, the applicant will be asked if the applicant wishes to revise the project or record. If so, the appeal will be withdrawn and the case returned to the District for appropriate action. If not, then the Division Engineer will rule on the merits of the appeal based on the administrative record without consideration of the new information. However, the new information may cause the District Engineer to take action under 33 CFR 325.7, independent of the appeal process.

Appendix A

Appendix B to Part 331—Applicant Options With Initial Proffered Permit

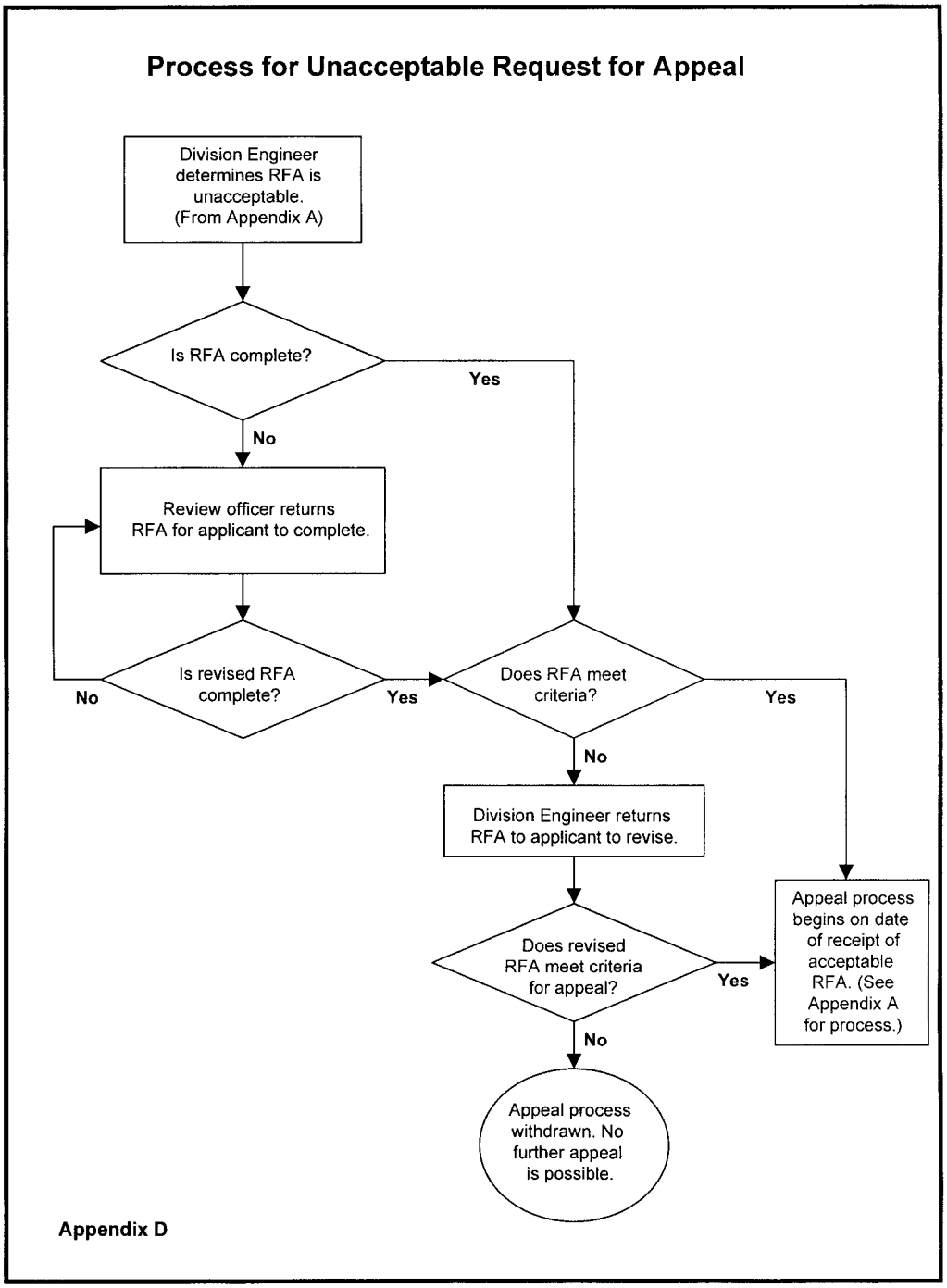


Appendix C to Part 331—Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

Appendix D to Part 331—Process for Unacceptable Request for Appeal



[FR Doc. 00–7439 Filed 3–27–00; 8:45 am]

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Federal Register

Tuesday,
March 28, 2000

Part IV

The President

Proclamation 7282—Education and Sharing Day, U.S.A., 2000

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

Presidential Documents

Title 3—

The President

Proclamation 7282 of March 24, 2000

Education and Sharing Day, U.S.A., 2000

By the President of the United States of America

A Proclamation

As we welcome a new millennium, America stands at a unique moment in time. We can look back over the past century, where we experienced profound advances in science, medicine, and technology that fundamentally altered the world in which we live. At the same time, we can look ahead to a new century filled with unparalleled promise and unlimited possibilities for further progress.

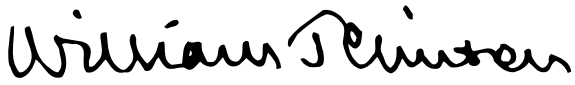
Throughout our Nation's history, education has been at the heart of achievement in America, and it is the key to meeting the challenges and seizing the opportunities that lie before us. To succeed in the global community of the 21st century, we must provide all our citizens with a world-class, well-rounded education. We must ensure that every American has not only the knowledge and the skills he or she needs to flourish, but also a solid foundation of moral guidance and values. As the technology revolution breaks down barriers of geography, culture, and economic status, it is more crucial than ever that young people learn the importance of tolerance, cooperation, and sharing. Imbued with these values and enriched by a quality education, our children can look forward to a bright future.

Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, recognized early the importance of such comprehensive learning. In addition to being one of the world's highly respected religious leaders, he was also an accomplished scholar in mathematics and science. Understanding that both secular education and spiritual training contribute enormously to human development, he sought to provide young people with fresh opportunities for academic, social, and moral enrichment through the more than 2,000 educational and social institutions he established throughout our country and around the world. His efforts continue to bear fruit today, helping a new generation to develop into responsible and mature adults.

As we observe this special day, let us renew our commitment to excellence in education and to nurturing our young people's academic and spiritual development. Let us also remember the example of Rabbi Schneerson and pass on to our children the values and knowledge that have strengthened our Nation in the past and that will empower us to face the challenges of the future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 28, 2000, as Education and Sharing Day, U.S.A. I invite Government officials, educators, volunteers, and all the citizens of the United States to observe this day with appropriate activities, programs, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

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